

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762	)	WT Docket No. 06-150
and 777-792 MHz Bands	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Section 68.4(a) of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible	)	
Telephones	)	
	)	WT Docket No. 03-264
Biennial Regulatory Review – Amendment of	)	
Parts 1, 22, 24, 27, and 90 to Streamline and	)	
Harmonize Various Rules Affecting Wireless	)	
Radio Services	)	
	)	WT Docket No. 06-169
Former Nextel Communications, Inc.	)	
Upper 700 MHz Guard Band	)	
Licenses and Revisions to Part 27 of	)	
the Commission's Rules	)	
	)	PS Docket No. 06-229
Implementing a Nationwide,	)	
Broadband, Interoperable Public	)	
Safety Network in the 700 MHz	)	
Band	)	WT Docket No. 96-86
	)	
Development of Operational, Technical and	)	
Spectrum Requirements for Meeting Federal,	)	
State and Local Public Safety	)	
Communications Requirements Through the	)	
Year 2010	)	

**COMMENTS OF RCC CONSULTANTS, INC.**

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## **COMMENTS OF RCC CONSULTANTS, INC.**

RCC Consultants, Inc. (“RCC”), hereby submits these ***COMMENTS OF RCC CONSULTANTS, INC.*** (these “Comments”), in response to the *Further Notice of Proposed Rulemaking* of the Federal Communications Commission (the “Commission”) in the above-entitled proceedings that was adopted on April 25, 2007 (the “April 25, 2007, R&O and FNPR”).

### **I. RCC and the Background to these Comments**

RCC is an international telecommunications consulting firm focused primarily upon public safety communications in the United States. Since its formation in 1984, RCC has served a range of public safety clients from some of the largest public safety agencies in this country to small and rural public safety agencies across the nation. RCC has provided engineering and other services to its clients in relation to wireless communications in all frequency bands to which public safety agencies are afforded access. RCC also provided the design and supported the development and optimization of the pioneering RAM Mobile Data network, the first national, open-access mobile data network in the United States. RCC is today the largest consultancy dedicated to public safety communications and has an extensive active client list of state, county, and municipal public safety agencies.

RCC has been an active participant in the proceedings of the Commission concerning the 700 MHz band and in the proceedings of a number of the 700 MHz Regional Planning Committees

(“RPCs”). Most recently, RCC filed comprehensive comments in relation to the Commission’s *Ninth Notice of Proposed Rule Making* in WT Docket No. 96-86 and Docket PS No. 06-229 (the “Ninth NPRM”). Those earlier comments of RCC (the “RCC Ninth NPRM Comments”) raised a number of concerns and issues respecting the proposal for a national interoperable public safety broadband network made in the Ninth NPRM. The RCC Ninth NPRM Comments provide essential background to these Comments. These Comments are also very much informed by the experience of RCC and its clients in relation to the 800 MHz Rebanding (WT Docket No. 02-55) in which RCC has been very actively engaged both on behalf of 800 MHz public safety licensees and as a participant in the Commission’s proceedings related thereto.

**For these reasons, RCC is in a strong position to gain a sound and sensitive understanding of the interests and concerns of public safety agencies as they relate to the April 25, 2007, R&O and FNPR. RCC has sought to reflect that understanding as faithfully and effectively as possible in these Comments.**

## **II. Summary of these Comments**

These Comments focus upon the proposal of Frontline Wireless, LLC (“Frontline”) for a public private partnership to develop a national broadband network in the upper 700 MHz band (the “Frontline Proposal”). In the April 25, 2007, R&O and FNPR, the Commission sought public comment upon the Frontline Proposal.

**RCC believes that the Frontline Proposal is a serious and positive contribution to the discussion of the provision of broadband wireless service to public safety agencies, but respectfully submits that the Frontline Proposal, as presently framed, has a number of very serious, but not irremediable, shortcomings from a public safety standpoint.** A number of those shortcomings derive from the framework developed by the Commission in the Ninth NPRM for the development of a national interoperable public safety broadband network (the “Commission’s Public Safety Broadband Proposal”). Others of the shortcomings of the Frontline Proposal are specific thereto. The Commission’s Public Safety Broadband Proposal and RCC’s concerns with respect thereto were addressed by RCC in the RCC Ninth NPRM Comments and by many other providers of comments on the Ninth NPRM. The Commission has not, as yet, addressed those comments. The specific shortcomings of the Frontline Proposal are addressed in these Comments.

**RCC’s purpose in making these Comments is not to offer reasons why, in general, the Commission’s Public Safety Broadband Proposal should not be adopted by the Commission or why, specifically, the approach of the Frontline Proposal should not be**

**adopted. It is, rather, the purpose of RCC to identify and analyze the shortcomings of those proposals and to offer an approach to overcoming those shortcomings such that, in the view of RCC, the interests of public safety would be well and truly served.**

**With that purpose in mind, RCC has developed what it believes to be an effective proposal for the least necessary modification of the Commission’s Public Safety Broadband Proposal and of the Frontline Proposal so as to enable those proposals to be adopted with all necessary and proper recognition of the concerns of public safety (the “RCC Broadband Proposal”).**

The RCC Broadband Proposal is outlined in these Comments and is set forth in detail in a series of proposed rules. By offering the RCC Broadband Proposal, RCC seeks not only to provide thoughtful criticism and analysis of matters and issues affecting the provision of broadband data service to public safety agencies, but also to deliver, where possible, solutions to identified problems rather than merely to identify showstoppers for the development of such service.

**RCC has sought to develop the RCC Broadband Proposal as an approach that would:**

- substantially embrace and build upon the Commission’s Public Safety Broadband Proposal,**
- be consistent, insofar as possible, with the Frontline Proposal (with the prior bullet point, the “Non-rejection Criteria”),**
- recognize that the shortcomings of the Commission’s Public Safety Broadband Proposal and of the Frontline Proposal are truly serious and must be properly and**

**adequately addressed, but do not likely or necessarily represent ultimate showstoppers so long as they are forthrightly and directly addressed and neither assumed away nor otherwise swept under the rug (the “Frank Recognition and Direct Address Criterion”),**

- seek to offer no more than the minimum necessary modifications to the Commission’s Public Safety Broadband Proposal and the Frontline Proposal as are truly required to overcome those shortcomings, and**
- offer as few modifications as possible by focusing upon modification that serve to address at once two or more of the shortcomings of the Commission’s Public Safety Broadband Proposal or the Frontline Proposal (with the prior bullet point, the “Effectiveness and Efficiency Criteria”).**

RCC respectfully submits that these three self-imposed criteria (the “Acceptable Modification Criteria”) could and should be applied to any suggested modification of the Commission’s Public Safety Broadband Proposal, including the Frontline Proposal, and to any suggested modification of the Frontline Proposal because:

- unnecessary departures from proposals intended in good faith to benefit public safety communications might lead to unproductive controversy and delay; and
- suggested modifications representing no more than the minimum required departures based upon careful consideration should bear a presumption of reasonableness, recommend themselves for adoption, and assist in reaching generally acceptable solutions for all concerned present and potential 700 MHz stakeholders.

RCC believes that the RCC Broadband Proposal meets the Acceptable Modification Criteria with respect to both the Commission's Public Safety Broadband Proposal and the Frontline Proposal, but RCC also believes that the Frontline Proposal does not meet the Acceptable Modification Criteria with respect to the Commission's Public Safety Broadband Proposal. Demonstrations of those conclusions are made in these Comments.

RCC appreciates that Frontline has indicated its openness to comment upon the Frontline Proposal and that Frontline recognizes that the development of an effective plan for the provision of broadband service to public safety agencies is a "collaborative and evaluative process [that] has not fully run its course." (Letter to the Commission from counsel to Frontline, dated March 26, 2007) RCC hopes that both Frontline and the Commission will look with favor upon the RCC Broadband Proposal by reason of the substance and purpose thereof and further by reason of the effort made by RCC in the development of the RCC Broadband Proposal to satisfy the Acceptable Modification Criteria.

The RCC Broadband Proposal has been prepared in the short time provided by the Commission for comments on the April 25, 2007, R&O and FNPR. The RCC Broadband Proposal may not, therefore, address all issues or all issues to an optimal degree. If appropriate, RCC will develop the RCC Broadband Proposal further through reply comments upon the April 25, 2007, R&O and FNPR. It is concerning to RCC that a proceeding as momentous as those bearing upon the public safety use of the 700 MHz band may not receive the full and required measure of comment and review. A number of clients of RCC have indicated that development of their own comments upon the Frontline Proposal would be difficult, have expressed their concerns to



RCC, and have indicated their appreciation of RCC's having filed the RCC Ninth NPRM Comments and encouraged RCC to file comments with respect to the Frontline Proposal.

Based upon its experience, RCC recognizes that public safety communications managers have a broad and burdensome range of responsibilities and duties often coupled with scarce and barely adequate resources to address pending problems and requirements. For these reasons, as a practical matter, it is often very difficult for such managers to formulate comments and seek intra-governmental approval for the filing thereof with the Commission within the period ordinarily limited for the submission of comments and reply comments. In recognition of that reality, RCC hopes that the Commission will seek additional comment from the public safety agencies that both provide the first responders and will be critically affected by the outcome of these proceedings and that the Commission will defer any decisions on the data portion of the 700 MHz band proceedings until such further comments are received.

Certain concerned observers of these proceedings have expressed to RCC their belief that the Commission is moving with locomotive-like irresistibility toward the adoption of the Frontline Proposal. RCC does not share that view and proceeds upon the basis that the Commission's request for comments upon the Frontline Proposal was made in the utmost good faith and that, therefore, the Commission is truly open to suggestions, like the RCC Broadband Proposal, for the improvement of the Frontline Proposal for the avoidance of the problems, issues, and concerns of the public safety community in relation to the Frontline Proposal specifically and the Commission's Public Safety Broadband Proposal in general.

The shortcomings of the Commission's Public Safety Broadband Proposal fall under three general headings as follows:

- *The Commission's Public Safety Broadband Proposal exceeds the Commission's statutory authority;*
- *The Commission's Public Safety Broadband Proposal is inconsistent with the overwhelming weight of the comments of public safety agencies with respect to the manner in which wideband or broadband networks should be created and governed and represents an unsupported discontinuity in regulatory development respecting such networks; and*
- *The Commission's Public Safety Broadband Proposal is unwise as it reflects an unworkable proposal or a proposal so fraught with uncertainties, problems, and the potential for conflict and other adverse developments that it is unlikely to assure "the rapid deployment of a nationwide, interoperable, broadband public safety network, and thereby improve emergency responsiveness." (Ninth NPRM at ¶ 3)*

These shortcomings of the Commission's Public Safety Broadband Proposal were discussed in detail in the RCC Ninth NPRM Comments and are considered again in Part III of these Comments, but only to the extent necessary to show how those shortcomings may be overcome by the RCC Broadband Proposal.

The fundamental shortcomings of the Frontline Proposal include:

- *Frontline's failure to address certain legal issues;*
- *The structural problems implicit in the Frontline Proposal -- the claimed reliance upon 'market-based' solutions and the problem of bargaining power;*

- *Frontline's ambiguous use of the term "public safety" – the need to distribute the power to make choices beyond the proposed national licensee and the matter of choice;*
- *Frontline's not addressing the issue of data service in areas Frontline will not cover; and*
- *The lightness of Frontline's consideration of critical technical issues.*

These shortcomings of the Frontline Proposal are discussed in detail in Part IV of these Comments. In Part V of these Comments, RCC explains how those shortcomings may be overcome by RCC's Broadband Proposal.

**The fundamental elements of the RCC Broadband Proposal are the following:**

- *The insertion of the RPCs into a significant role in the development of a national public safety broadband network;*
- *The utilization of the RPCs as vehicles both to provide the required authorizations for the proposed national public safety broadband licensee and to bring the developer of the proposed network closer to the potential public safety users thereof;*
- *The delegation of critical choices more directly to the potential public safety users of the proposed network;*
- *The redefinition of the role of the proposed national licensee to assure that such role is in accord with public safety sentiment expressed through the RPCs and does not extend to matters not strictly related to the development of the proposed network;*
- *The provision of safeguards to assure that there is a reasonable balance of bargaining power between the developer of the proposed network, on the one hand, and the proposed national licensee and the RPCs on the other;*

- *The requirement that critical technical issues be promptly and effectively addressed by a competent body subject to appropriate approvals; and*
- *The establishment of a dispute settlement process and a definitive frame of reference therefor.*

The RCC Broadband Proposal is comprehensively set forth as a series of rules in Part VI of these Comments.

**RCC believes that the modification, in accordance with the RCC Broadband Proposal, of the Commission's Public Safety Broadband Proposal or the Frontline Proposal's variation thereon would effectively cure all or substantially all of the concerning shortcomings of the Commission's Public Safety Broadband Proposal and the Frontline Proposal.**

**First, while RCC believes that certain of the legal issues bearing upon the Commission's statutory authority to implement the Commission's Public Safety Broadband Proposal require very serious consideration that has not been provided to date by the Commission or by Frontline, RCC is convinced that the adoption of the RCC Broadband Proposal would both**

- **materially strengthen an assertion on the part of the Commission of authority to adopt the Commission's Public Safety Broadband Proposal or the Frontline variation thereon; and**
- **seriously discourage time-consuming challenges in the courts to the authority of the Commission and, thereby, minimize the risk of delay to the implementation of a public safety broadband network.**

**Second, RCC is very confident that the adoption of the RCC Broadband Proposal would materially enhance:**

- **the probability of the success of the proposed network from the standpoint of all concerned stakeholders; and**
- **the likelihood that the deployment of that network would improve responsiveness to emergencies.**

**Third, RCC is persuaded that the adoption of the RCC Broadband Proposal would:**

- **materially strengthen public safety support for and**
- **materially assuage public safety doubts and concerns respecting**

**the Commission's Public Safety Broadband Proposal or the Frontline variation thereon.**

### **III. The Shortcomings of the Commission's Public Safety Broadband Proposal and How the RCC Broadband Proposal Would Remedy those Shortcomings**

The fundamental shortcomings of the Commission's Public Safety Broadband Proposal were discussed in detail in RCC's Ninth NPRM Comments. This Section III provides a brief overview of those shortcomings and a categorization thereof and then addresses by category how the RCC Broadband Proposal could overcome those shortcomings.

#### **A. Overview and Categorization**

Set forth below is an outline of the shortcomings of the Commission's Public Safety Broadband Proposal discussed in detail in the RCC Ninth NPRM Comments. The outline includes definitions of categories of problems. Those definitions and categories are utilized in Sections III.B-H of these Comments below to enable an effective and efficient discussion of how the RCC Broadband Proposal would address those shortcomings.

- **The Commission's Public Safety Broadband Proposal exceeds the Commission's statutory authority:**
  - *The Commission's Public Safety Broadband Proposal violates 47 U.S.C. § 337(f)(1)(B) by proposing to license an entity which is neither a state or local government entity nor a nongovernmental organization that is authorized by a government entity whose primary mission is the provision of public safety services;*
  - *The Commission's Public Safety Broadband Proposal violates 47 U.S.C. §*

*337(f)(1)(C) by proposing to permit the license of the spectrum to be utilized for the national public safety broadband network to provide commercial service providers access to the licensee's assigned spectrum;*

- *The Commission's Public Safety Broadband Proposal violates 47 U.S.C. § 337(f)(1)(A) by failing to establish broadband services that have as their sole or principal purpose the protection of life, health or property; and*
- *The Commission does not have the authority to adopt the Commission's Public Safety Broadband Proposal when that proposal violates the plain meaning of the requirements of 47 U.S.C. § 337(f)(1) (collectively, the "Overall Authority Problem").*

- **The Commission's Public Safety Broadband Proposal is inconsistent with the overwhelming weight of the comments of public safety agencies with respect to the manner in which wideband or broadband networks should be created and governed and represents an unsupported discontinuity in regulatory development respecting such networks (the "Public Safety Support Problem").**
- **The Commission's Public Safety Broadband Proposal is unwise as it reflects an unworkable proposal or a proposal so fraught with uncertainties, problems, and the potential for conflict and other adverse developments that it is unlikely to assure "the rapid deployment of a nationwide, interoperable, broadband public safety network, and thereby improve emergency responsiveness." (Ninth NPRM at ¶ 3)**
  - *The Commission's Public Safety Broadband Proposal is not based upon a sound operational foundation because:*
    - ❖ *The Commission's Public Safety Broadband Proposal proceeds upon a*

*misunderstanding of the needs of first responders;*

- ❖ *The Commission's Public Safety Broadband Proposal does not include the requisite degree of regional flexibility;*
- ❖ *The establishment of a monopoly is not the best approach to promoting the rapid deployment of a nationwide, interoperable, broadband public safety network and thereby to improve emergency responsiveness;*
- ❖ *The Commission has taken upon itself too much responsibility for the specification of the proposed network;*
- ❖ *The Commission has misconceived the sources of operational progress in the development of effective interoperability for public safety first responders;*
- ❖ *The Commission has not addressed operational problems associated with a national licensee's control of the preemption of access;*
- ❖ *The Commission has not addressed operational problems associated with the absence of local control of communications access in an emergency;*
- ❖ *The Commission has not addressed the need for practice exercises in order to maintain effectiveness of interoperations and the dependence of such exercises on local/regional control of the radio system which is relied upon;*
- ❖ *The Commission has not addressed either the differences in technical standards between public safety radio systems and commercial radio*



*systems or the problem of public safety technical standards' not being met and maintained;*

❖ *The Commission has not addressed maintenance standards and network recovery requirements; and*

❖ *The Commission has not addressed the absence of operational alternatives for public safety agencies which have requirements not met by the national public safety broadband network proposed (collectively, the "Sound Operational Foundation Problem").*

○ *The Commission's Public Safety Broadband Proposal is not based upon a sound technical foundation because:*

❖ *The proposal is vulnerable to the unavailability of properly functioning cognitive radios;*

❖ *The Commission's requirement of an IP-based architecture is not a self-executing specification;*

❖ *The Commission's exclusion of wideband systems will result in coverage sacrifice or cost increases or both;*

❖ *The Commission's licensing the 700 MHz spectrum dedicated to narrowband to the national licensee on a secondary basis is technically flawed;*

❖ *The Commission has not addressed the undeveloped state of interoperability for data;*

❖ *The Commission has not addressed the technical vulnerability implicit in all public safety agencies relying upon one broadband network for*

*their interoperability requirements; and*

- ❖ *The Commission has not addressed the consequences of public safety agencies choosing not to integrate their operations with the national public safety broadband network proposed or choosing not to monitor the transmissions made thereon (collectively, the “Sound Technical Foundation Problem”).*
- *The Commission’s Public Safety Broadband Proposal is not based upon a sound commercial foundation:*
  - ❖ *The qualifications established for the national licensee do not assure its success in the development of a national public safety broadband network;*
  - ❖ *The proposed national licensee is not, without major change, institutionally suited for the proper development of a national public safety broadband network proposed;*
  - ❖ *The proposed national licensee cannot reasonably be expected to act effectively for the thousands of public safety agencies which are potential users of the national public safety broadband network proposed;*
  - ❖ *Limitations of the proposed national licensee are inconsistent with the obligations imposed thereon by the Commission’s Public Safety Broadband Proposal;*
  - ❖ *Limitations placed upon the proposed national licensee by the Commission’s Public Safety Broadband Proposal will materially*

*impede the fulfillment of the licensee's imposed obligations;*

- ❖ *The national licensee will have at its disposal inadequate spectrum to make a commercial lease arrangement that would serve public safety interests; and*
- ❖ *The Commission's Public Safety Broadband Proposal may necessarily involve subsidies and other asymmetrical treatment of users that could imperil the adoption of the national public safety broadband network proposed (collectively, the "Sound Commercial Foundation Problem").*
- *The Commission's Public Safety Broadband Proposal relies upon material unproven assumptions and fails to consider developments at the regional and local level in public safety that undermine certain of the assumptions upon which that proposal depends.*
  - ❖ *The Commission optimistically assumes that funding for the Commission's Public Safety Broadband Proposal will be made available upon terms that promote the development of ubiquitous interoperability;*
  - ❖ *The Commission assumes the commercial success of the Commission's Public Safety Broadband Proposal and the national licensee's commercial service provider partner and does not consider or make provision for failure;*
  - ❖ *The Commission optimistically assumes that the fee for service rates will be fair, reasonable, and attractive to public safety agencies and*

*provides no mechanism for change if those rates do not attract users;*

- ❖ *The Commission optimistically assumes the universal adoption of service from the national licensee and does not consider that the failure of universal adoption will fundamentally undermine the national character of the public safety broadband network proposed;*
- ❖ *The Commission optimistically assumes the viability of the public private partnership model in meeting the needs of public safety and does not consider the evidence to the contrary;*
- ❖ *The Commission makes very optimistic assumptions about cost savings without examining the bases therefor; and*
- ❖ *The Commission assumes without warrant that no regulatory framework is required for the operations of the national licensee and the national public safety broadband network proposed (collectively, the “Uncertainty Problem”).*

- *The Commission’s Public Safety Broadband Proposal is unlikely to meet the objectives set by the Commission therefor (the “Objective Realization Problem”).*

#### **B. The Overall Authority Problem**

In the RCC Ninth NPRM Comments, RCC showed that:

- **The spectrum proposed to be utilized in the Commission’s Public Safety Broadband Proposal is 700 MHz spectrum allocated pursuant to the requirements of 47 U.S.C.**

§337(a)(1) which provides that “[n]ot later than January 1, 1998, the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows ... 24 megahertz of that spectrum for public safety services ...” (Emphasis supplied);

- “Public safety services” are defined, for the purposes of the allocation made pursuant to the requirements of 47 U.S.C. §337(a)(1), in 47 U.S.C. §337(f)(1), which is quoted above, and establishes three separate and independent tests for “public safety services” (the “Three Tests”):
  - *An affirmative purpose or use test:* “the sole or principal purpose of [public safety services] is to protect the safety of life, health, or property” (the “Affirmative Purpose or Use Test” of subparagraph (f)(1)(A));
  - *A licensee qualification test:* “[public safety services are services] that are provided – (i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services” (the “Licensee Qualification Test” of subparagraph (f)(1)(B)(i) and (ii)); and
  - *A negative purpose or use test:* “[public safety services are services] that are not made commercially available to the public by the provider” (the “Negative Purpose or Use Test” of subparagraph (f)(1)(C);
- Each of the Three Tests must be satisfied by the Commission’s Public Safety Broadband Proposal;
- The Commission adopted an improperly narrow focus when it concentrated its legal analysis particularly, indeed only, on the Negative Purpose or Use Test of

**subparagraph (f)(1)(C);**

- **The Commission did not recognize or seek to address the challenges of meeting the Affirmative Purpose of Use Test of subparagraph (f)(1)(A) and the Licensee Qualification Test of subparagraph (f)(1)(B)(i) and (ii);**
- **By allowing the commercial use of spectrum allocated pursuant to the requirements of 47 U.S.C. §337(a)(1) only on an unconditionally preemptible, secondary basis, the Commission seeks at once:**
  - *to enable commercial services in the spectrum required by 47 U.S.C. §337(a)(1) to be used for “public safety services”; and*
  - *to meet the unqualified prohibition of the Negative Purpose or Use Test of subparagraph (f)(1)(C); and*
- **The Commission does not have the authority to adopt the Commission’s Public Safety Broadband Proposal when that proposal violates the plain meaning of the requirements of 47 U.S.C. § 337(f)(1).**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seek to address the Overall Authority Problem and provide means to overcome that problem. The RCC Broadband Proposal provides for the authorizations necessary to meet the requirements of the Licensee Qualification Test of subparagraph (f)(1)(B)(i) and (ii) of 47 U.S.C. § 337, and RCC believes that this solution is fully satisfactory. The RCC Broadband Proposal provides for the use of certifications of authorizing public safety agencies to meet the requirements of the Affirmative Purpose or Use Test of subparagraph (f)(1)(A) of 47 U.S.C. § 337 and the Licensee Qualification Test of subparagraph (f)(1)(B)(i) and (ii) 47 U.S.C. § 337. Those certifications

would be to the effect that (i) joining in a national public safety broadband network is in the best interests of the public safety agency, (ii) in the judgment of the public safety agency such commercial use, if any, as is made of the public safety spectrum in connection with the national public safety broadband network will be essentially invisible to the public safety agency, and (iii) joining in a national public safety broadband network is the only, the most feasible, or the most practical means of making broadband service available to the public safety agency. RCC believes that this solution is the best available and should be substantially satisfactory. RCC believes that the certification solution proposed by RCC, when coupled with the broad general authority of the Commission, should provide adequate specific authority for the Commission to adopt the Commission's Public Safety Broadband Proposal or the Frontline variation thereon.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Overall Authority Problem: Section 2 (*The Authorization and Opt-out Rules*); Section 3 (*Rules for the Development of the Network Sharing Agreement*); and Section 4 (*Rules for the Development of Joinder Agreements*); Section 5 (*Rules for Action by RPCs*).

### **C. The Public Safety Support Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Public Safety Support Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem which expresses itself largely, but not entirely, in the sense of public safety agencies that greater control of data technologies including, but not limited to broadband, should

be placed at the regional and local levels or in the wholesale rejection of the Commission's Public Safety Broadband Proposal.. The recently filed *Comments of Region 43 Regional Planning Committee* (State of Washington) (May 19, 2007) directly reflects the Public Safety Support Problem: "We suggest that the Development of an entirely new broadband network, and the removal of public safety spectrum from near-term availability, is poor public policy." (At p. 3) To a similar effect are the *Comments of Region 40, 700 MHz Regional Planning Committee* (Northern Texas) (May 16, 2007): "One size definitely does not fit all when it comes to communications solutions, including emerging advanced high speed data technologies. As a result, the public safety agencies in our Region must be able to have a choice of technology that best fits their needs, whether that is broadband, wideband, or a combination of both.) (At p. 2) Further with respect to the Public Safety Support Problem, see also: *Comments of Region #13 Illinois 700 MHz Planning Committee* (May 22, 2007 (at p. 1); and *Comments of Grundy County Emergency Telephone System Board* (Illinois) (May 21, 2007) (At pp. 1-2).

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Public Safety Support Problem: Section 2 (*The Authorization and Opt-out Rules*); Section 3 (*Rules for the Development of the Network Sharing Agreement*); Section 4 (*Rules for the Development of Joinder Agreements*); Section 5 (*Rules for Action by RPCs*); Section 16 (*Specification of National Licensee's Rights, Obligations, etc.*); Section 17 (*Requirements Applicable to the Joinder Agreements*) ; and Section 19 (*Disputes between the E Block Licensee and RPCs*).



**D. The Sound Operational Foundation Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Sound Operational Foundation Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and identification of issues that must be overcome.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Sound Operational Foundation Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 14 (*The Requirements respecting the Emergency Protocol*);
- Section 15 (*Specification of E Block Licensee's Rights, Obligations, etc.*);
- Section 16 (*Specification of National Licensee's Rights, Obligations, etc.*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

**E. The Sound Technical Foundation Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Sound Technical Foundation Problem and provide means to overcome that

problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and identification of issues that must be overcome.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Sound Technical Foundation Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

#### **F. The Sound Commercial Foundation Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Sound Commercial Foundation Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and identification of issues that must be overcome.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Sound Commercial Foundation Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);

- Section 9 (*The Requirements respecting the E Block Business Plan*);
- Section 10 (*The Requirements respecting the National Licensee's Business Plan*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 13 (*The Requirements respecting the Tariff*);
- Section 14 (*The Requirements respecting the Emergency Protocol*);
- Section 15 (*Specification of E Block Licensee's Rights, Obligations, etc.*);
- Section 16 (*Specification of National Licensee's Rights, Obligations, etc.*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

**G. The Uncertainty Problem.**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Uncertainty Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and identification of issues that must be overcome. The Uncertainty Problem is clearly reflected in the recently filed *Comments of the Texas Statewide Interoperability Executive Committee* (May 15, 2007), which refer to “so many unknown consequences and issues” respecting the Commission’s Public Safety Broadband Proposal. (At p. 6)

The following sections of the rules that comprise the detail of the RCC Broadband Proposal

address the Uncertainty Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 9 (*The Requirements respecting the E Block Business Plan*);
- Section 10 (*The Requirements respecting the National Licensee's Business Plan*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 12 (*The Requirements respecting the Completion Schedule*);
- Section 14 (*The Requirements respecting the Emergency Protocol*);
- Section 15 (*Specification of E Block Licensee's Rights, Obligations, etc.*);
- Section 16 (*Specification of National Licensee's Rights, Obligations, etc.*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

#### **H. The Objective Realization Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Objective Realization Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and identification of issues that must be overcome. The Objective Realization Problem was expressly reflected in the recently filed *Comments of King County, State of Washington* (May 18, 2007). The County there stated that “if adopted, [the Commission’s Public Safety Broadband Proposal] will not deliver on its intended goals in regards to public safety

communications.” (At p.2)

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Uncertainty Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 9 (*The Requirements respecting the E Block Business Plan*);
- Section 10 (*The Requirements respecting the National Licensee’s Business Plan*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 12 (*The Requirements respecting the Completion Schedule*);
- Section 13 (*The Requirements respecting the Tariff*);
- Section 14 (*The Requirements respecting the Emergency Protocol*);
- Section 15 (*Specification of E Block Licensee’s Rights, Obligations, etc.*);
- Section 16 (*Specification of National Licensee’s Rights, Obligations, etc.*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

#### **IV. The Shortcomings of the Frontline Proposal**

In this Section IV of these Comments, RCC sets forth its view of Frontline and of the Frontline Proposal, expresses its recognition of the seriousness of the Frontline Proposal, and explains what RCC believes to be the serious (but remediable) shortcomings in the Frontline Proposal.

For the sake of clarity, when RCC refers to the Frontline Proposal, RCC is referring to that proposal as set forth in the following Frontline documents:

- The February 26, 2007, Comments of Frontline Wireless, LLC (the “Frontline Comments”);
- The March 6, 2007, Comments of Frontline Wireless, LLC (the “Frontline Service Rules Comments”);
- The March 12, 2007, Reply Comments of Frontline Wireless, LLC (the “Frontline Reply Comments”); and
- The March 26, 2007, Letter with Attached Draft Service Rules (the “Frontline Letter and Service Rules”).

##### **A. RCC’s Generally Favorable View of the Frontline Proposal**

**Before focusing upon the shortcomings of the Frontline Proposal, RCC clearly recognizes that the Frontline Proposal is a serious contribution to the discussion of the provision of broadband wireless service to public safety agencies. Frontline appears prepared to back its suggestions with adequate financial resources and to be willing to take on the bulk of the**

**responsibility for securing the financial backing for and the actual building of a nationwide broadband wireless network that would serve both commercial users and public safety user. RCC personnel having been intimately involved in those tasks in the financing and development of the RAM Mobile Data Network, understand the daunting nature of Frontline’s proposed undertaking, applaud the courage of the principals of Frontline expressed in their being willing and enthusiastic to take the risks and do the work required. RCC has a “been there, done that” view of the Frontline Proposal and substantial admiration for Frontline on that account.**

The direct financial commitment proposed to be made by Frontline clearly distinguishes the Frontline Proposal from other proposals respecting the development of a national public safety broadband network in the 700 MHz band. Frontline’s expressed willingness and desire to be a network developer and operator and to build a business based thereon represents a far more serious effort to add value in relation to the 700 MHz band than proposals to build a business in the space, if any, between the network provider (or providers) and the public safety community and to do so with vastly less, if anything, at risk in so doing. Intermediation *as a business* (as distinction from a temporary engagement) must necessarily involve (i) *continuing* costs that will, most likely, be imposed directly or indirectly upon public safety users and (ii) the development of interests on the part of *an intermediation-based business*, some of which may be materially in conflict with the interests of public safety users.

The Frontline Proposal minimizes the space within which would-be intermediators might operate by Frontline’s taking the role of wholesaler of network service (and properly so). The effect of

the RCC Broadband Proposal would be similar in that respect, but that effect would derive, in the case of the RCC Broadband Proposal, from its providing more direct, diverse, and non-monolithic public safety input rather than from the choice of business model (wholesaler of network capacity), as in the case of the Frontline Proposal.

**The Frontline Proposal seems to RCC to be at its strongest in matters reflecting the entrepreneurial necessity to dream big dreams and entrepreneurial willingness to take big risks. The Frontline Proposal does, however, reflect certain critical weaknesses.**

**First, the Frontline Proposal does not appear to reflect any deep understanding of public safety communications, the operational or technical requirements of public safety agencies, or the self-reliance of public safety agencies, all of which place serious limitations upon reliance upon a national public safety broadband licensee, which licensee is a critical feature of both the Commission's Public Safety Broadband Proposal and the Frontline Proposal.** While it is true that the Frontline Proposal embraces general public safety with unreserved enthusiasm and seeks to justify and support itself upon that proposal's claimed contributions to public safety, it must be understood that, under the Frontline Proposal, public safety offers at least as much to Frontline as Frontline offers to public safety. That conclusion is not in and of itself concerning as the indicated balance may well provide the basis for a deal. However, Frontline appears to have much to learn about public safety requirements and operations and about dealing with public safety agencies before that balance can be achieved in fact and can serve effectively as the basis for a transaction.



Second, the Frontline Proposal does not appear to reflect any material experience on the part of the principals of Frontline with the 800 MHz Rebanding. (Only a party wholly unfamiliar with the 800 MHz could write: “Many negotiations in a variety of circumstances take place pursuant to the Commission’s rules. Yet, few require Commission intervention.” (March 26, 2007, Letter of Counsel to Frontline to the Commission) The reliance by Frontline upon a requirement for ‘good faith’ negotiations on the part of Frontline and the proposed national licensee and Frontline’s optimism that it will reach a deal with the proposed national licensee appear to RCC, as they must appear to many other active participants in the 800 MHz Rebanding, rather profoundly naïve. The 800 MHz Rebanding is fresh on the minds of many of the public safety agencies that are potential users of the proposed network. Frontline’s intoning the benefits of public/private partnerships appears to proceed with a cheerful unawareness of the troubles experienced by 800 MHz public safety licensees in their public/private partnership with Sprint Nextel Corporation (“Nextel”) to improve public safety communications in the 800 MHz band. Many 800 MHz public safety licensees would be very wary of taking comfort in the obligation of another to act in good faith where that licensee’s focus is upon maintaining the public safety and the other party has no public safety responsibility, but does have a great deal of money at stake. The lessons of the 800 MHz Rebanding need to be taken onboard by Frontline, and structural alterations to the Frontline Proposal need to be made to ensure that the interests of public safety are protectable in principle and protected in fact.

RCC is not alone in making the connection between the 700 MHz proceeding and the 800 MHz Rebanding. The recently filed *Comments of Region 43 Regional Planning Committee* (State of

Washington) (May 19, 2007) clearly makes that connection: "... almost without exception, the same jurisdictions likely to implement 700 MHz systems are in many cases deeply mired in the 800 MHz rebanding process." (At p. 4)

**Third, the Frontline Proposal is not terribly impressive from a technical standpoint. The Frontline Proposal invokes every possibly applicable buzz word (e.g., 'IP-based,' 'virtual private network,' etc., etc. etc.) to convey the whiz bang character of its proposed network, but that proposal makes no serious effort and, in certain instances, no effort at all to address critical technical issues (e.g., authentication, priority access, unconditional preemption, etc., etc., etc.). Frontline appears to intend to defer the solution to some later date or negotiation, but it seems to RCC that certain fundamental technical issues must be settled early and definitively if commitments to the Frontline Proposal by potential public safety users are to be informed and intelligently made.**

If the Frontline Proposal were submitted in response to a request for proposal for high speed data service prepared in accordance with public safety standards, the Frontline Proposal would, in the experience of RCC, be rejected out of hand as lacking any technical substance.

Clearly, the Frontline Proposal needs work in these respects, but that deficiency can be overcome. However, critical to the curing of that deficiency is the provision of a structure for the early consideration of technical deficiencies that assures the participation of all concerned stakeholders in the development and acceptance of the cure.

Fourth, Frontline may well know the Commission, its interests, its predilections, and the buttons to push to make the proper impression on the regulatory front. However, that knowledge is necessary, but hardly sufficient, to build a successful business. Frontline appears to RCC not to know at all well its intended customers, their interests, their predilections, or the buttons that must be pushed to make a proper impression upon state, county, and municipal public safety agencies. Fundamental to understanding those agencies is recognition of the repeated refrain of public safety communications officers: “Don’t you tell us what we need. We know far better than you what we need, and we will let you know.” The ‘you’ in that refrain includes any vendor, service provider, organization, or governmental authority that has no local knowledge, has no familiarity with local needs and practices, has no public safety experience, or has no public safety responsibilities, but operates presumptuously to advise public safety respecting public safety communications needs. That sentiment was clearly expressed in relation to the Commission’s Public Safety Broadband Proposal in the *Comments of the Texas Statewide Interoperability Executive Committee* (May 15, 2007): “After reviewing the above captioned proceedings it has become apparent to the TSIEC representatives that the *Further Notice of Proposed Rulemaking* for the 700 MHz frequency band will unilaterally dictate how modern high speed data communications must be implemented by state, tribal, regional and local first responder entities.” (At p. 3)

To the extent that the Frontline seeks to talk to public safety through a single national licensee, and, in fact, that extent in the Frontline Proposal is very great, RCC predicts that Frontline will fail even if the Frontline Proposal is adopted by the Commission. Frontline must be willing to

address the state, county, and municipal public safety agencies themselves directly and learn and accommodate their particular needs. In failure thereof, skepticism and concern about the value and reality of a national interoperable public safety broadband network of the kind recently expressed in the comments of Johnson County, Kansas, and ETMC EMS will grow in the public safety community:

We are watching with great interest the various proposals for nationwide public-safety data systems. We understand the need for maximizing interoperability. But we expect that such a solution will take many years to become available nationwide. We have immediate data needs that we badly need to be able to address in the interim. Also, without any more information than we have at present about the eventual national system, we cannot determine whether it will be feasible for our day-to-day operations. In particular we will need more information about costs, coverage, governance, and availability during the initial hours of a disaster before we can make an informed decision about using such a system routinely. ...

We urge the Commission to choose an option that permits locally-owned and locally or regionally controlled wideband data systems in the 700 MHz public safety spectrum. (*Comments regarding the FCC FNPRM 07-72 of 4/25/07, Johnson County, KS, 5/17/07, at p. 2*)

It has become apparent to ETMC EMS that the Further Notice of Proposed Rule Making for the 700 MHz frequency band will take control and choice away from local agencies and allow the Federal Government to dictate what type of data communications system we implement. Our EMS units, Tyler Police and Fire units and the Smith County Sheriff's units will all be using Data, especially broadband, in the next 8-10 years. EMS will desire to send live video of patients back to the ETMC Level 1 Trauma Center while police and sheriff's units will want to receive/transmit photos, fingerprints and video real-time to/from their vehicles. Rural East Texas offers a variety of challenges to implementing data which calls for a unique flexibility in data system selection. With all of these users having different communications requirements and with technology moving at such a rapid pace, it would be detrimental to ETMC EMS if we are not afforded various choices of data network implementations. We agree that having a nationwide data network would be advantageous for interoperability, however, the unknowns (lack of cost effectiveness to implement in our sparsely populated area, cost to the user groups, network support required for public safety agencies, etc), we feel that allowing privately owned wideband and broadband data networks is of utmost importance. (*Comments of ETMC EMS [East Texas Medical Center, Tyler, TX, Emergency Medical Service], May 17, 2007, at pp. 2-*

3)

If Frontline fails to address the state, county, and municipal public safety agencies themselves directly and learn and accommodate their particular needs, then Frontline risks its being regarded, contrary to its expressed intent which RCC accepts, as seeking to make another spectrum grab by fast-talking quick buck artists who pander to public safety to gain a regulatory advantage and then fail utterly to deliver on their promises. In RCC's view, no good purpose would be served by the failure of Frontline, and it is to lower the risk of such failure that RCC offers its advice to Frontline.

**Finally, while Frontline may view the RCC Broadband Proposal as disruptive in certain respects of the approach developed in the Frontline Proposal for dealing with the public safety community, RCC believes beyond peradventure or doubt that Frontline itself would be well served by the adoption of the RCC Broadband Proposal. Frontline's support of the RCC Broadband Proposal would, in the view of RCC, be seen in the public safety community as a real and serious commitment to meet the concerns of public safety, as an acknowledgement that Frontline offers its service to public safety with real freedom of choice, and as an expression of self-confidence on the part of Frontline that its service offering will be so obviously superior that Frontline will benefit from freedom of choice on the part of public safety.**

**B. The Categories of RCC's Concerns respecting the Frontline Proposal**

RCC's concerns respecting the Frontline Proposal are, notwithstanding its admiration therefor,

very serious and are, RCC believes, shared widely in the public safety community at the working public safety agency level. (RCC is not suggesting that national organizations of public safety agencies hold a different view, but only, rather, that RCC is unaware of the current views of those organizations and has as its sources of information working level personnel at state, county, and municipal public safety agencies. In addition, the potential participation of national organizations in a national public safety broadband licensee may possibly confuse or complicate their thinking in relation to (i) the Commission's Public Safety Broadband Proposal or (ii) the variation thereon represented by the Frontline Proposal.)

**RCC's concerns respecting the Frontline Proposal fall into the following categories:**

- **Frontline's failure to address certain legal issues;**
- **The structural problems implicit in the Frontline Proposal -- the claimed reliance upon 'market-based' solutions and the problem of bargaining power;**
- **Frontline's ambiguous use of the term "public safety" -- the need to distribute the power to make choices beyond the proposed national licensee and the matter of choice;**
- **Frontline's not addressing the issue of data service in areas Frontline will not cover; and**
- **The lightness of Frontline's consideration of critical technical issues.**

Those categories of concern are addressed in Sections IV.C-G of these Comments.

**C. Frontline's failure to address certain legal issues**

Frontline asserts without relevant analysis that the Frontline Proposal:

- is “consistent with current authority” of the Commission. (Frontline Comments, at p. (i))
- can be implemented “without the need for ... a change in the law.” (Frontline Comments, at p. 2)

Frontline similarly asserts that: “The Commission has the statutory authority to implement” the Frontline Proposal. (Frontline Comments, at pp. 218-19) Frontline refers to the Commission’s “broad authority in regulating the electromagnetic spectrum” and points to a number of statutory provisions supporting the powers of the Commission. (Frontline Comments, at p. 22) However, Frontline neither makes reference to nor provides any analysis of the specifically applicable statutory provision (47 U.S.C. § 337) which is the statutory basis for both the commercial and public safety allocations in the 700 MHz band.

RCC is uncertain why Frontline relied upon general statutory provisions when a specific provision was clearly applicable. It cannot be that Frontline was unaware of the problems presented for both the Commission’s Public Safety Broadband Proposal and the variation thereon represented by the Frontline Proposal as Frontline is represented by counsel of the highest repute. In any event, those problems were squarely raised in the RCC Ninth NPRM Comments, and the Frontline Reply Comments made no reference thereto. In the recently filed *Comments of the FoxComm Counties* (the Wisconsin Counties of Brown, Calumet, Outagamie, and Winnebago), it was noted that: “While FoxComm does not claim to be a legal authority, we are concerned that the 9<sup>th</sup> NPRM may violate Section 337(f) of the Communications Act if the

licensed entity is anything other than a consortium of state and local governments, or an authorized non-governmental entity whose primary mission is the provision of public safety services. Licensing a different form of entity may call into question the FCC's legal authority in this matter." (At p.3) Surely, this point did not escape Covington & Burling.

RCC does not believe that Frontline construed the RCC Ninth NPRM Comments as raising no substantial questions regarding the statutory authority of the Commission to adopt certain critical elements of the Commission's Public Safety Broadband Proposal and thus the Frontline Proposal. RCC well understands that Frontline is seeking support from the Commission for the Frontline Proposal, but there is a cloying quality to Frontline's approach to the Commission and to Frontline's irrational exuberance in its expression of the scope of the Commission's authority (e.g., "the National Public Safety Licensee – as wisely proposed by the *Ninth NPRM*" [Frontline Comments, at p. 33]).

In RCC's view, a little less obvious fawning over the Commission by Frontline and an obviously more direct consideration by Frontline of the legal obstacles to the adoption of the Commission's Public Safety Broadband Proposal would have served the Commission more effectively and might have resulted in a contribution to overcoming (rather than masking) those obstacles.

The superficial consideration and gushing endorsement of the Commission's Public Safety Broadband Proposal in the Frontline Proposal over abundantly satisfies the relevant Non-rejection Criterion *i.e.*, the requirement for substantially embracing and building upon the Commission's Public Safety Broadband Proposal, but utterly fails to satisfy the Frank



Recognition and Direct Address Criterion, *i.e.*, the requirement for the recognition of the shortcomings of the Commission's Public Safety Broadband Proposal (and of the Frontline Proposal) that are truly serious and must be properly and adequately addressed and for the forthright and direct consideration thereof and the avoidance of any effort to assume those shortcomings away or otherwise sweeping them under the rug.

It is obvious that the Frontline Proposal shares the same Overall Authority Problem with the Commission's Public Safety Broadband Proposal. The Overall Authority Problem is the most challenging obstacle to the adoption of the frontline Proposal. RCC has demonstrated above in the context of RCC's discussion of the Commission's Public Safety Broadband Proposal how the RCC Broadband Plan would eliminate or minimize the Overall Authority Problem. (See Section III.B of these Comments, above. See also Section V.A of these Comments, below.).

**D. The structural problems implicit in the Frontline Proposal -- the claimed reliance upon 'market-based' solutions and the problem of bargaining power**

There are a number of serious structural problems inherent in the frontline Proposal, and those structural problems create the risk that the promise or potential presented to public safety by the Frontline Proposal may not in fact be realized or at least not fully so (those problems collectively, the "Structural Problem").

*1. A "market-based" solution and the problem of unequal bargaining power*

The Frontline Proposal makes a number of references to that proposal's being "market-based,," but Frontline offers neither any definition of "market-based" nor any explanation for why, implied, being "market-based" is a virtue or provides advantage and, if so, for whom. (See, for example, the Frontline Comments, at p.11; and the Frontline Service Rules Comments, at p8.)

If, by the use of the term "market-based," Frontlines means to communicate that the Frontline Proposal depends only upon free market principles and is independent of governmental intervention or planning, that message would not be truthful. The whole of the Frontline Proposal depends upon governmental action from the very creation of the proposed new "E Block" (the Frontline Comments at pp. 19-22) to the grant to the E Block licensee of "the exclusive right to lease excess capacity on the public safety broadband spectrum" (the Frontline Comments at p. 23) to the creation of certain proposed bidding credits applicable to certain bidders at the auction for the proposed E Block.

If, by the use of the term "market-based," Frontlines means to communicate that the Frontline Proposal utilizes private capital, that message would be truthful, but obvious and not meaningful.

While RCC is uncertain about what precisely Frontline means by "market-based," RCC is very concerned that there is one free market element to the Frontline Proposal that could operate materially adversely to the interests of public safety. Central to the Frontline Proposal is the negotiation between Frontline and the proposed national broadband licensee of a network sharing

agreement. That negotiation is critical to the protection of the separate interests of Frontline and public safety, and, in certain respects, those interests are adverse.

Frontline recognizes that there is a question whether the national licensee will “have sufficient leverage vis-à-vis the E Block licensee to achieve the public safety community’s objectives.” (See the Frontline Letter at p.4.) Frontline suggests that the answer to that question is in the affirmative based upon the unavoidable interdependencies of those parties. While RCC believes that there is a measure of reality in that observation, RCC is concerned that a critical structural defect in the Frontline Proposal will likely override that observation and that, as a result, in those negotiations, it is reasonably clear that there will be a considerable imbalance in bargaining power between Frontline and the national broadband licensee. That imbalance will certainly favor the well-funded frontline over the national licensee, which will itself start life essentially unfunded or clearly underfunded in relation to its responsibilities.

The imbalance in bargaining power is quite alarming to any public safety participant in the 800 MHz Rebanding. In that proceeding, many affected 800 MHz public safety licensees depended upon receiving funding to plan for the reconfiguration of their radio system from Nextel. Nextel did not make access to planning funding easy, and licensee after licensee was forced into mediation with Nextel over disputed planning issues, and those licensees were forced to fund those mediation effort that were intended to provide planning funding. The relative weakness in bargaining power of public safety licensees compared to Nextel resulted in licensees having to accept inadequate planning funding.

The example of the 800 MHz Rebanding is by no means remote from the Frontline Proposal and the negotiation of the network sharing agreement. In fact, Frontline has acknowledged the problem implicitly by its statement that: “Frontline is prepared to provide appropriate funding [to the nation licensee] to support this important function [i.e., negotiating the network sharing agreement on behalf of public safety interests].” (See the Frontline Letter at p.7.)

The disparity in bargaining power implicit in a situation where one party controls the funding for the negotiation costs of the other party and can determine what level of funding is “appropriate” is too obvious to require further elaboration. Public safety interests must be at risk in these circumstances. This structural flaw in the Frontline Proposal is glaring, but not difficult to remedy as the RCC Broadband Proposal demonstrates. (See Section V.B of these Comments, below.) Firm, irrevocable, and adequate funding for the representation of public safety interests must be provided from the outset of the process and sustained throughout. Such funding must be viewed by Frontline not, as the Frontline Proposal appears to suggest, as a matter of grace and favor, but rather as an obligation and a necessary cost of doing business.

2. The network sharing agreement and the problem of reliance upon optimism and good faith

Frontline relies upon some combination of optimism and good faith obligations to assure that Frontline and the national broadband licensee will successfully conclude a network sharing agreement. (See, for example, the Frontline Service Rules Comments at pp. 15-16.) Such reliance is an unsound basis for proceeding. A network sharing agreement of the sort

contemplated appears unprecedented, and, therefore, there are no relevant past agreement, forms, or guidance that would narrow issues and establish a range of reasonable for the terms of a network sharing agreement.

The probability of disputes seems high, and such probability is wholly consistent with the good faith of Frontline and the national broadband licensee. Adverse interests simply spawn disputes between reasonable parties. Neither arbitration nor mediation of such disputes is promising because the very above-referred-to absence of past agreement, forms, or guidance that would narrow issues and establish a range of reasonableness for the terms of a network sharing agreement that contributes to the probability would also deprive any arbitrator or mediator of any recognized basis for making a dispositive ruling or proposing a solution.

The Frontline Proposal is structurally defective in not providing for the development of a definitive frame of reference for the negotiation of the network sharing agreement. This structural flaw in the Frontline Proposal is clear, but able to be remedied as the RCC Broadband Proposal demonstrates. (See Section V.B of these Comments, below.)

### 3. The network sharing agreement and the problem of “consultation”

It is plain that Frontline has given more than casual thought to the network sharing agreement and plans that such agreement will not unduly encumber Frontline. That conclusion is implicit in the limitation of Frontline’s obligation to satisfy public safety concerns respecting the design, construction, and operation of the shared network to an obligation to “consult” and only with the

national broadband licensee. (See the Frontline Service Rules, at p.5.) An obligation to consult is no obligation at all if the issue is actually satisfying public safety needs as opposed to merely learning about those needs and leaving them unsatisfied in fact.

The limpness of the network sharing agreement as contemplated by Frontline is an obvious structural defect. This flaw in the Frontline Proposal can be adequately addressed as the RCC broadband Proposal demonstrates. (See Section V.B of these Comments, below.)

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The elements of the Frontline Proposal that give rise to the Structural Problem are modifications of the Commission's Public Safety Broadband Proposal that do not meet critical aspects of the Effectiveness and Efficiency Criteria, *i.e.*, the requirements that (i) no more than the minimum necessary modifications to the Commission's Public Safety Broadband Proposal be offered, (ii) only such modifications as are truly required to overcome those shortcomings be offered, and , and (iii) as few modifications as possible be offered by focusing upon modifications that serve to address at once two or more of the shortcomings of the Commission's Public Safety Broadband Proposal.

**E. Frontline's ambiguous use of the term "public safety" – the need to distribute the power to make choices beyond the proposed national licensee and the matter of choice.**

There are a number of serious problems inherent in the Frontline Proposal that arise as a result of that proposal's heavy emphasis upon the role of the proposed national licensee, the

assumption that such licensee can effectively represent the interests of the broad and diverse public safety community, and failure to provide for adequate participation by state, county, and municipal public safety agencies and an effective means to organize that participation (those problems collectively, the “Representation and Choice Problem”). The Representation and Choice Problem creates the paired risks that (i) the promise or potential presented to public safety by the Frontline Proposal may not in fact be realized or at least not fully so and (ii) Frontline’s prospects for commercial success may be materially limited.

1. Frontline’s ambiguous use of the term “public safety”

Unfortunately, the Frontline Proposal makes frequent and ambiguous use of the term “public safety.” It is often unclear whether, when Frontline uses the term “public safety,” Frontline is referring to the proposed national licensee, the public safety community as ‘represented’ by the national licensee, or state, county, and municipal public safety agencies acting on their own behalf. (For examples, see the Frontline Letter [Frontline will “have powerful incentives to reach agreement with public safety” at p. 5; “If public safety prefers to build its own network, it would remain free to do so,” at p.5

The problem here is not only or even essentially linguistic. The real problem is truly substantive and a critical aspect of the broader Representation Problem. The underlying issues are:

- Are all interests of state, county, and municipal public safety agencies common interests?
- To what extent do the interests of state, county, and municipal public safety agencies differ or even conflict?

- If all interests of state, county, and municipal public safety agencies are not common interests, how will Frontline ascertain and address those interests that are not commonly held?
- If the interests of state, county, and municipal public safety agencies differ or even conflict, how will one national licensee be able to represent effectively those differing and even conflicting interests?
- Will state, county, and municipal public safety agencies truly accept representation by a single national licensee?
- Will the interests of the national licensee ever differ from or conflict with those of state, county, and municipal public safety agencies, as, for example, in relation to fees and charges?
- If the interests of the national licensee ever differ from or conflict with those of state, county, and municipal public safety agencies, how will the national licensee be able to represent the interests of those public safety agencies?
- If the interests of the national licensee ever differ from or conflict with those of state, county and municipal public safety agencies, and if, on that account, the national licensee is unable to represent the interests of those public safety agencies, how will those interests of those public safety agencies be represented?

The success of the Frontline Proposal very much depends upon the answers to those questions. RCC believes that Frontline must have optimistically assumed answers that are consistent with Frontline's success, but that the assumed answers are not obviously correct. The diversity and independence of public safety agencies should not be underestimated, and the willingness of



public safety agencies to rely upon virtual representation and to delegate or accept the involuntary delegation of decisional authority should not be overestimated. Any radio engineering professional who has worked on state, county, and municipal public safety radio systems knows that the needs differ among the jurisdictions. Any radio engineering professional who has worked on regional radio systems intended for the shared use of state, county, and municipal public safety agencies knows that conflicts among their respective needs necessarily and inevitably arise. No radio engineering professional can easily or effectively represent all those conflicting and differing interests. Why Frontline believes that the proposed single national licensee will be able to do so is unexplained and far from obvious.

In the limiting case, the critical issue is where the power to choose lies and whether, if that power does not lie with the public safety agencies themselves or with accepted regional aggregations of such agencies, those agencies will ever give serious support to a scheme that relegates them to insignificance.

2. Frontline's focus upon the planned national licensee

The limiting case referred to above is hardly theoretical because that very case is, in substance, incorporated into the Frontline Proposal which places the proposed national licensee at center stage and the state, county, and municipal public safety agencies somewhere on the street outside the stage door.

Frontline anticipates negotiating the overarching network sharing agreement only with the proposed national licensee. (Frontline Letter at pp. 5-7) Indeed, Frontline expressly indicated

that it will learn of public safety needs and requirements by negotiating with the national licensee. “The public safety licensee can and should serve the function of identifying and negotiating for these specific needs [of public safety agencies].” (Frontline Letter at p. 6)

The Representation and Choice Problem also expresses itself in the fact that the national licensee may place very different weight upon the national and interoperable nature of the proposed public safety broadband network than do state, county, and municipal public safety agencies. This difference in perspective will likely arise because the rationale for the role of the national licensee is very closely associated with the national and interoperable nature of that network, but state, county, and municipal public safety agencies will accord that national and interoperable nature of that network a rather low priority as explained in the next section. The conflict between those perspectives further undermines the effectiveness of any virtual representation that could be provided by the national licensee to those public safety agencies.

3. The realities of public safety communications and their bearing upon the Frontline Proposal

The Frontline Proposal assumes the need for national broadband interoperability with any critical examination thereof. Any such examination might yield information adverse to the interests of Frontline because the assumed need for national broadband interoperability is essentially the door-opener for the Frontline Proposal. Frontline’s interest in avoiding any challenge to or examination of that assumed need appears to add elements of unnecessary inflexibility to the Frontline Proposal. One of those elements of unnecessary inflexibility is the expansive role

assigned in the Frontline Proposal to the planned national licensee. The logic seems to be that:

- National needs drive the development of a national interoperable broadband network;
- A national interoperable broadband network requires a national licensee;
- A national interoperable broadband network requires a national decision-making;
- National decision-making exalts the importance of the national licensee;
- Regional needs need to be acknowledged, but not too much;
- It is proper, or at least easier, to assume that regional needs are met by national decision-making than actually to assess and address regional needs;
- Local needs must be acknowledged, but not too much; and
- It is proper, or at least easier, to assume that local needs are met by national decision-making than actually to assess and address local needs.

This logic is at odds with any real understanding of how public safety agencies affected by these proceedings (none of which public safety agencies is national in scope) actually operate and how and to what degree they depend upon local, regional, and national interoperability. It does not appear from the Frontline Proposal that Frontline has any serious understanding of these matters. RCC believes such an understanding is critical to the removal from the Frontline Proposal of its inflexible national perspective and to the maximization of the scope for the exercise of choice by state, county, and municipal public safety agencies.

RCC believes that public safety communications may usefully be divided into three levels where those levels are distinguished by:

- the frequency of utilization;

- the number of agencies involved; and
- the perceived importance to public safety agencies and the public.

“Level I” public safety communications are those most frequently occurring and in which the essential need for fundamentally sound local communication entirely within a single local public safety agency or multiple local public safety agencies in order to support effective response to routine emergencies. RCC estimates that this local response comprises approximately 98% of the emergency responses of local public safety agencies. These daily issues do not receive the nationwide television coverage. Calls for service related to crimes, automobile accidents, house fires, and medical emergencies represent that vast bulk of emergency communications.

For Level I public safety communications, the responding public safety agency requires reliable communications capability during the response, including, as necessary, access to certain data bases (e.g., building and hazmat records, medical records, motor vehicle registration and drivers’ license records, and warrants and other criminal records, as needed). Level I public safety communications are the fundamental daily and hourly requirement for responding to (i) those events and situations that consume most of a public safety agencies time and resources and typically does not involve first responder resources from other jurisdictions and (ii) those events that require a real-time local initial response even though they may escalate and require a follow-on multi-jurisdictional response. The nature of the vast preponderance of Level I public safety communications is a fact that Frontline does not recognize in its quest for involvement in the development of a national interoperable public safety broadband network. For Level I public

safety communications, neither the national nor interoperable nature of that proposed network have any value at all.

“Level II” public safety communications are those required in situations in which local public safety agencies need outside regional support, *i.e.*, assistance from the public safety agencies of surrounding jurisdictions, are generally defined in regional emergency operations plans. RCC estimates that occasions requiring such regional support and Level II public safety communications, *i.e.*, communications between public safety agencies of different jurisdictions, but within the same region, comprise approximately 1.5% of the incidents encountered by a local public safety agency. The public safety community has addressed regional mutual aid through establishment of Emergency Response Plans or Tactical Communications Interoperability Plans (“TICPs”) that set interagency agreements that permit crossing jurisdictional lines to provide support and backup to the primary responding agency. Level II public safety communications are always a topic addressed in regional Emergency Response Plans and are provided for by diverse means, including equipping participating agencies with common radio channels or providing handheld radios to responding personnel from neighboring jurisdictions at a staging area.

The nature of Level II public safety communications does not seem to be recognized by Frontline in its quest for involvement in the development of a national interoperable public safety broadband network. For Level II public safety communications, neither the national nor interoperable nature of that proposed network are at all critical.

“Level III” public safety communications are those required in situations involving a devastating emergency for response to which a local public safety agency requires assistance from agencies which are based at locations far removed from the incident and which are not included or provided for in regional Emergency Response Plans. RCC estimates that the need for Level III public safety communications arises in fewer than 0.5% of all public safety responses. Level III public safety communications are most often called for in situations where the event for the response to which assistance is sought has itself materially adversely affected the ability of local and regional public safety agencies to respond, *e.g.*, Hurricane Andrew or Hurricane Katrina.

The essential rarity of the need for Level III public safety communications does not seem to be recognized by Frontline in its quest for involvement in the development of a national interoperable public safety broadband network. For Level III public safety communications, the national and interoperable nature of that proposed network are critical, but the need therefor must be recognized as occurring on an exceptional basis.

If a national interoperable public safety broadband network is to make a maximal contribution to public safety communications, the development, decision-making, and operation of that network must reflect the fact that the center of gravity of public safety communications is entirely within the scope of Level I public safety communications. National decision-making and national needs have very little bearing upon Level I (or even Level II) public safety communications. Decision-making and evaluation of need should follow the center of gravity of public safety communications which is squarely within the local or local and regional sphere. The Frontline

Proposal places far too much weight upon the planned national licensee. No national licensee can possibly reflect adequately local and regional needs or should properly purport to do so.

RCC is certain that, if local public safety agencies were asked about the relative importance of the fundamental ability to communicate daily to the local dispatch facility and the ability to interoperate with first responders from distant areas, those local agencies would choose the former consistently and without hesitation. For the Frontline Proposal to make the greatest possible contribution to public safety communications, Frontline must, without in any sense abandoning the goal of a national interoperable public safety broadband network, seek to maximize the contribution the Frontline Proposal could make to Level I and Level II public safety communications. That contribution must be made, sold, and delivered on an essentially local basis and in satisfaction of essentially local needs and requirements. These conclusions are fully supported by the recently filed comments of York County, South Carolina.

I request the commission to reconsider the "tentative conclusion" that the current public safety data spectrum, which had been identified for wideband use, should be used to support only broadband operations consistent with nationwide standards. While I recognize the need for a nationwide standard and interoperability, York County Government has invested local funds to implement technology for our emergency responder that will meet our needs with the availability of 700 MHz spectrum. The safety of our responders is of utmost importance and the ability to provide critical information in a timely manner is critical. Broadband data will significantly enhance our ability to protect our citizens and reduce hazards to our emergency responders.

Nationwide public safety broadband is a certainly a need but it should not be addressed at the expense of the current investment that has been made by local governments. With the rapid changes in technology, I do not believe that local governments and public safety should be required to take "a wait and see approach" over the next eight to ten years, while a nationwide broadband network is built. I do not believe a clear plan has been developed to address the needs of our public safety community, in a timely manner, in such a nationwide proposal. (*Comments of York County*, at pp. 2-3)

The national focus of the Frontline Proposal must, to a material degree, be subordinated to the realities of public safety communications. For Frontline to be successful, its proposed network must be seen to be a collection of effective local (and regional) networks first and a national network second. For that perception to develop and become reality, the role of the national licensee must be carefully circumscribed, but by no means eliminated, and appropriate provision made for local and regional choice, local and regional decision-making, and local and regional input.

RCC understands that Frontline must, in order to secure the Commission's support, address and concur in the importance attached at the federal level to providing for public safety communications for the once in several years incident. This regulatory imperative is undeniable, but a regulatory imperative is not a sufficient basis for a successful business, particularly where the potential customers of that business do not attach substantial weight to that regulatory imperative, but, rather, have different priorities that Frontline could address if Frontline were able to put the regulatory imperative in perspective in due course, avoid an exclusively national focus, and incorporate its potential customers into the network development and operations process early, permanently, and effectively.

The regulatory imperative must clearly be satisfied by Frontline to get into the game, but the game will never mature into a successful business if Frontline is long governed by the regulatory imperative.



4. The limited role of state, local, and municipal public safety agencies under the Frontline Proposal

Although the Frontline Proposal pays certain deference to public safety agencies, all that deference operates too late in the process (after the proposed network is built) and provides for no securing of input directly from public safety agencies in relation to any of the fundamental issues concerning the network (design, construction, maintenance, operation, coverage, technical specifications, tariffs, etc., etc., etc.).

The discussion by Frontline of public safety control of “virtual private networks” is patently vague, provides none of the assurance that public safety agencies seek in relation to high speed data networks, and operates at a time so late in the process as to be essentially of no value or comfort to the agencies that (unlike the national licensee) actually provide the public safety first response. (See on this point, the Frontline Comments (at p. 15) and the Frontline Reply Comments (at pp. 7-8).)

5. The financial relationships among the stakeholders

The description of the relevant financial arrangements made in the Frontline Proposal is far too opaque to enable any serious endorsement, but that description is sufficiently concerning to raise certain alarms.. The concept of “a reasonable network management fee from the National Public Safety Licensee to cover those reasonable costs of maintaining or upgrading the network that are attributable to public safety’s use of the network infrastructure” (Frontline Comments, at p. 27) is unworkable as a contractual provision, is an assured source of conflict, and is a formula based

upon an assumption, *i.e.*, that there are any truly incremental maintenance or upgrade costs, that is unproven and not obviously correct. There is no possible way for a public safety agency to agree to such an approach, and no state, county, or city attorney would permit his or her employer to be bound by such a clause.

The management fee to the national licensee is said in the Frontline Proposal to be recoverable from public safety users by the national licensee's "collecting usage fees." (Frontline Comments at pp27-28) The imposition upon public safety agencies of a usage fee by the party (*i.e.*, the proposed national licensee) that is in place to represent the interests of public agencies is a formula for conflict, and that conflict is made all the more clear by the facts that (i) the Frontline Proposal provides no suggested tariff development methodology, no limitation on the amount of such fees, no limitation of such fees to actual cost recovery, no basis for a public safety agency to know that broadband service might cost, and no factual basis for enabling a public safety agency to make a judgment about the Frontline Proposal's fairness and equity in this respect; and (ii) the Frontline Proposal even suggests that usage fees could be used for unspecified "other initiatives that promote public safety communications" (Frontline Proposal at p. 34) and thus appears to contemplate a taxing power on the part of the proposed national licensee over public safety users to support projects which those users will not have authorized and of which they may not, in fact, approve.

Finally, the Frontline Proposal indicates that the E Block Licensee "would have access to public safety towers and rights of way to facilitate network buildout." (Frontline Service Rules Comments at p. 16) Apart from the technical problems and the legal problems associated with

this claim on the part of Frontline, Frontline gives no indication that it intends to pay for tower access and rights of way even though it is clear that such access and such rights would benefit Frontlines commercial network. The assiduousness with which Frontline seeks in its management fee (ultimately payable by public safety agencies) to recover costs related to public safety usage is not reciprocated in an assiduous effort to credit public safety agencies for benefits they are expected to confer upon Frontline.

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The elements of the Frontline Proposal that give rise to the Representation Problem are modifications of the Commission's Public Safety Broadband Proposal that do not meet critical aspects of the Effectiveness and Efficiency Criteria, *i.e.*, the requirements that (i) no more than the minimum necessary modifications to the Commission's Public Safety Broadband Proposal be offered, (ii) only such modifications as are truly required to overcome those shortcomings be offered, and , and (iii) as few modifications as possible be offered by focusing upon modifications that serve to address at once two or more of the shortcomings of the Commission's Public Safety Broadband Proposal.

**F. Frontline's not addressing the issue of data service in areas Frontline will not cover**

The Frontline Proposal reflects many problems that relate to coverage and are inadequately addressed or not addressed at all in that proposal (collectively, the "Coverage Assurance Problem"). The Frontline Proposal does not distinguish between mobile and portable coverage or between outdoor and in-building coverage or, most importantly between commercial quality

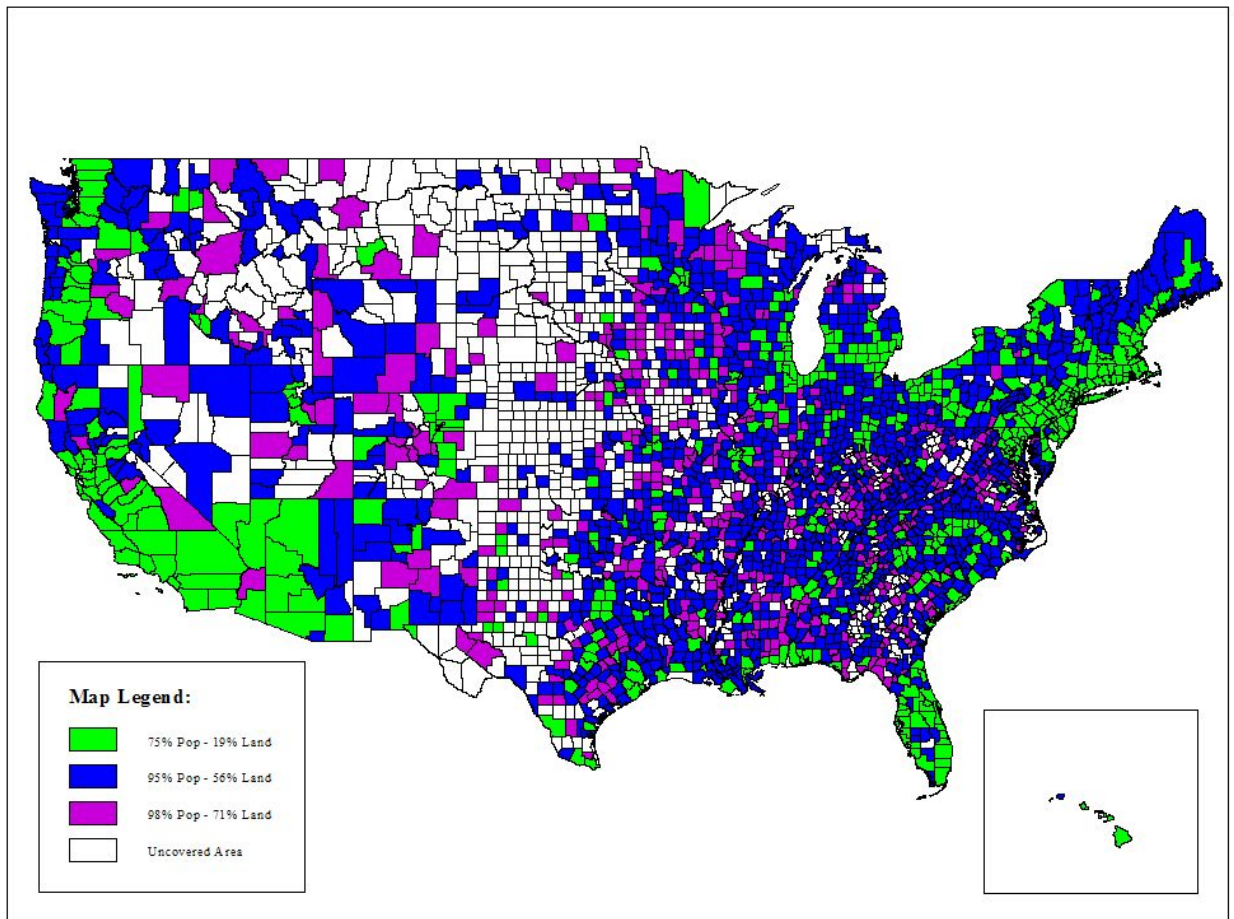
coverage and public safety quality coverage. The Frontline Proposal does not even speak of coverage in engineering terms. The Frontline Proposal is simply not actionable from the standpoint of public safety agencies that, as a matter of policy and practice, address communications issues with a deep technical understanding and a perspective that recognizes that emergencies take place not only in densely populated areas, but also in areas that are unserved by commercial carriers because there is no return upon an investment in coverage where user potential is simply too low.

Even if Frontline lives up to its coverage commitments (vague as they are from an engineering standpoint), there will be substantial areas of the country which will not have broadband service from Frontline and for which concerned public safety agencies could provide no 700 MHz high speed data service of any kind because of the proposed exclusive license to the national licensee. The Frontline Proposal does not address this problem at all, and the problem is substantial and involves 29% of the geography of the country not counting Alaska, including a large swath through the middle of the country from the Dakotas to Texas.

Public safety communications is fundamentally different from commercial communications. Commercial service providers rightly have to balance coverage with costs to develop a network. The Frontline Proposal's repeated reference to coverage based upon population highlights the difference between public safety networks and commercial networks. Public safety requires coverage based upon the totality of a geographic area, not the population in the geographic area. Emergency responses are not constrained to population centers, although there are more responses required in areas of with a higher population. A public safety agency must be

prepared to respond to any geographic area in its jurisdiction on a moment's notice. The Frontline Proposal's objective of providing coverage to 98% is clearly an objective framed by a commercial service provider mentality. That objective leaves almost a third of the country (excluding Alaska) uncovered. A public safety system is never specified with reference to coverage based upon population. (For the Frontline Proposal's discussion of coverage, see the Frontline Letter at pp. 7-8; and the Frontline Service Rules at pp. 3-4.)

As an illustrative example, RCC took the geographic area of the country, then starting with the county of the highest population and proceeding in decreased order of population to the county with the lowest population, added the population until the Frontline benchmarks of 75%, 95%, and 98% of the population were met. RCC fully understands that the actual coverage will be dependent on more factors, but as in illustration the following coverage map was produced:

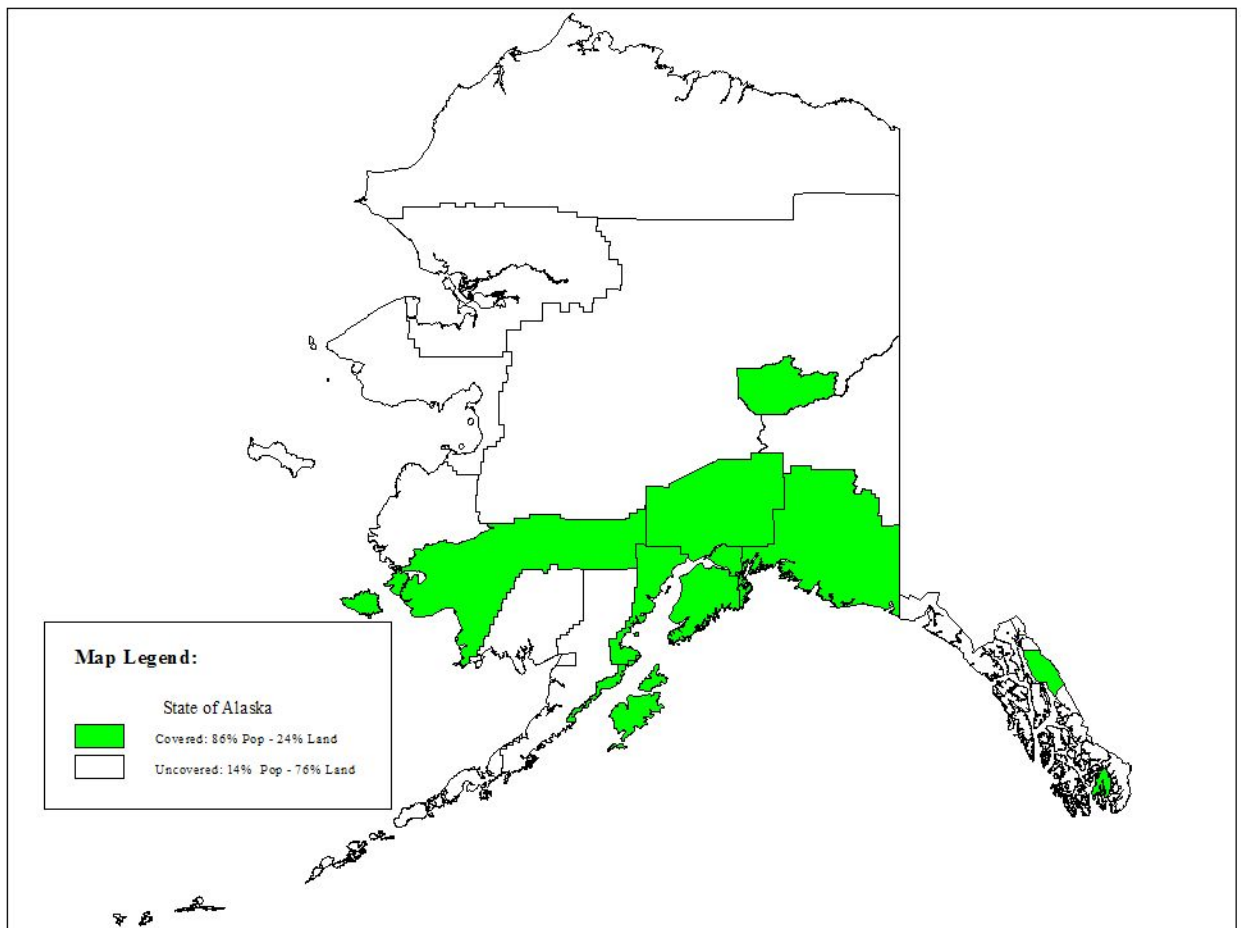


The green areas present the 75% of the population that (and 19% of the land) that Frontline would cover within four years. The blue areas represent the additional 20% of the population (and 37% of the land) that Frontline would cover in the fifth through seventh years. The purple areas represent the additional 3% of the population and (15% of the land) that Frontline would cover in the eighth through tenth years. Put differently, under the Frontline Proposal:

- 81% of the land would be uncovered for at least four years;
- 44% of the land would be uncovered for between four and seven years;
- 39% of the land would be uncovered for between eight and ten years; and
- 29% of the land would never be covered.

In other words, many public safety agencies would not receive broadband data services for quite a long time, and some could never look forward to seeing such service.

The addition of Alaska produced the following coverage map based upon counties (rather than cities as in the Frontline Proposal) of population of greater than 10,000:



RCC estimates that 76% of the geographic area of Alaska will not be covered by broadband, and this number understates the coverage deficiency because the county/city distinction.

**G. The lightness of Frontline's consideration of critical technical issues**

Frontline Proposal is neither impressive nor expressive in relation to technical issues on technical issues.(the "Technical Deficiency Problem"). No serious effort is made in the Frontline Proposal to address any of the many complex technical issues that would need to be addressed before any public safety agency could make a judgment respecting the wisdom of its reliance upon the Frontline network. Public safety agencies simply do not make decisions based upon the extremely then record offered by Frontline.



## **V. How the RCC Broadband Proposal Would Remedy the Shortcomings of the Frontline Proposal**

### **A. The Overall Authority Problems**

This issue is addressed in Section III.B of these Comments.

### **B. The Structural Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Structural Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, identification of issues that must be overcome, and explicit means to adjust bargaining power.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Structural Problem:

- Section 2 (*The Authorization and Opt-out Rules*);
- Section 3 (*Rules for the Development of the Network Sharing Agreement*);
- Section 4 (*Rules for the Development of Joinder Agreements*);
- Section 5 (*Rules for Action by RPCs*);
- Section 6 (*Funding the Negotiation of the Network Sharing Agreement*);
- Section 7 (*Funding the Negotiation of Joinder Agreements*);

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 12 (*The Requirements respecting the Completion Schedule*);
- Section 13 (*The Requirements respecting the Tariff*); and
- Section 17 (*Requirements Applicable to the Joinder Agreements*).

**C. The Representation and Choice Problem.**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Representation and Choice Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, identification of issues that must be overcome, and express provisions against conflicts and preserving choice.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Representation and Choice Problem:

- Section 2 (*The Authorization and Opt-out Rules*);
- Section 3 (*Rules for the Development of the Network Sharing Agreement*);
- Section 4 (*Rules for the Development of Joinder Agreements*);
- Section 13 (*The Requirements respecting the Tariff*);
- Section 16 (*Specification of National Licensee's Rights, Obligations, etc.*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

**D. The Coverage Assurance Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Coverage Assurance Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, identification of issues that must be overcome, and express provisions against conflicts and preserving choice.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Coverage Assurance Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

**G. The Technical Deficiency Problem**

In these Comments and the rules that comprise the detail of the RCC Broadband Proposal, RCC seeks to address the Technical Deficiency Problem and provide means to overcome that problem. The approach taken in these Comments and those rules is to provide the means to address that problem primarily by means of express clarification, explicit allocations of responsibility, and

identification of issues that must be overcome.

The following sections of the rules that comprise the detail of the RCC Broadband Proposal address the Technical Deficiency Problem:

- Section 8 (*Requirements Applicable to the Network Sharing Agreement*);
- Section 11 (*The Requirements respecting the Technical Spec*);
- Section 17 (*Requirements Applicable to the Joinder Agreements*);
- Section 18 (*Disputes between the E Block Licensee and the National Licensee*); and
- Section 19 (*Disputes between the E Block Licensee and RPCs*).

## **VI. Comprehensive Statement of the RCC Broadband Proposal**

### **A. Overview of the RCC Broadband Proposal**

The fundamental elements of the RCC Broadband Proposal are the following:

- *The insertion of the RPCs into a significant role in the development of a national public safety broadband network;*
- *The utilization of the RPCs as vehicles both to provide the required authorizations for the proposed national public safety broadband licensee and to bring the developer of the proposed network closer to the potential public safety users thereof;*
- *The delegation of critical choices more directly to the potential public safety users of the proposed network;*
- *The redefinition of the role of the proposed national licensee to assure that such role is in accord with public safety sentiment expressed through the RPCs and does not extend to matters not strictly related to the development of the proposed network;*
- *The provision of safeguards to assure that there is a reasonable balance of bargaining power between the developer of the proposed network, on the one hand, and the proposed national licensee and the RPCs on the other;*
- *The requirement that critical technical issues be promptly and effectively addressed by a competent body subject to appropriate approvals; and*
- *The establishment of a dispute settlement process and a definitive frame of reference therefor.*

The RCC Broadband Proposal is comprehensively stated below in the form of a series of rules. Those rules seek to address all of the problems and shortcomings of the Commission's Public Safety Broadband Proposal and the Frontline Proposal.

**B. The Rules of the RCC Broadband Proposal**

**In this Section VI.B of these Comments, RCC sets forth the Rules of the RCC Broadband Plan.**

**1. The General Rules**

**Rule 1.1: The Purposes of the Rules of the RCC Broadband Proposal (these "Rules" and, each, a "Rule")**

The purposes of these Rules are to address the following problems:

- The Overall Authority Problem;
- The Public Safety Support Problem;
- The Sound Operational Foundation Problem;
- The Sound Technical Foundation Problem;
- The Sound Commercial Foundation Problem;
- The Uncertainty Problem;
- The Objective Realization Problem;
- The Structural Problem;
- The Representation and Choice Problem;
- The Coverage Assurance Problem; and
- The Technical Deficiency Problem.

Rule 1.2: Construction of these Rules

These Rules shall be construed to:

- Assure, to the maximum extent possible, the rapid deployment of a nationwide, interoperable, broadband public safety network (the “Network”) and thereby improve emergency responsiveness;
- Maximize, to the greatest practical extent, the effective participation of state, local, and municipal public safety agencies in the design, specification, deployment, and operation of the Network;
- Assure that state, local, and municipal public safety agencies have, to the maximum practical extent, freedom of choice in relation to whether to participate in the Network or obtain broadband services from other sources or by other means;
- Maintain, to the maximum practical extent, the compatibility and interoperability of the Network and any other public safety broadband (or wideband) networks that may be developed by state, local, and municipal public safety agencies in the 700 MHz band;
- Give effect to the recognition that the Network to be successful must not only provide national broadband public safety interoperability, but must also provide broadband service support for local public safety operations that do not depend upon the national or interoperable nature of the Network and that those local operations may supply as much as 98% or more of the public safety traffic offered to the Network;
- Minimize the decisional and representational responsibilities of the proposed national public safety broadband licensee (the “National Licensee”) and defer, to the maximum possible degree, to the 700 MHz Regional Planning Committees (the “RPCs”) for decisions affecting and representation of their constituent public safety agencies;

- Make clear that the National Licensee has only such license status as is authorized by the RPCs and must utilize that license status solely to benefit the constituent public safety agencies of the authorizing RPCs;
- Assure that the interests of state, local, and municipal public safety agencies in the design, specification, deployment, and operation of the Network are properly represented and that such representation is timely and adequately funded;
- Provide a definitive frame of reference for the development of a network sharing agreement among the E Block Licensee and the National Licensee (the Network Sharing Agreement”); and
- Provide a definitive frame of reference for the development of agreements between the E Block Licensee and the RPCs to join in the Network Sharing Agreement (“Joinder Agreements”).

## 2. The Authorization and Opt-out Rules

### Rule 2.1: No Direct Authorization of the National Licensee

The National Licensee shall receive no authorization for the use of public safety spectrum for the Network directly.

### Rule 2.2: Direct Authorization of RPCs

Direct authorization for the use of 700 MHz broadband (or wideband) spectrum shall be provided to the RPCs by the Commission and shall extend, in the case of each RPC, only to the territory for which the RPC is responsible.



Rule 2.3: Authorization of National Licensee by RPCs

Any and all authorization of the National Licensee to use public safety spectrum for the Network shall derive from the action of the RPCs in providing that authorization and the action of the Commission in empowering the RPCs to provide authorization to (or withhold authorization from) the National Licensee.

Rule 2.4: No Obligation to Provide Authorization

No RPC shall be obligated to provide authorization to the National Licensee for the use of public safety spectrum for the Network.

Rule 2.5: Territorial Limitations on RPC Authorizations

The authorizations to the National Licensee for the use of the public safety spectrum for the Network shall be provided by the RPCs separately with respect to the geographical area covered thereby.

Rule 2.6: Freedom of Choice

If an RPC determines not to provide authorization to the National Licensee for the use of public safety spectrum for the Network, the RPC may authorize constituent public safety agencies to develop together or separately broadband (or wideband) networks within their respective territories in accordance with the planning processes adopted by the RPC and required by the Commission and subject to the obligations (i) to maintain, to the maximum practical extent, the compatibility and interoperability of the Network and any other public safety broadband (or wideband) networks developed by the RPC's constituent public safety agencies in the 700 MHz

band and (ii) coordinate for the purpose of the avoidance of interference with (a) adjacent RPCs that have not provided authorization for the use of the public safety spectrum for the Network and (b) the E Block Licensee with respect to territories of RPCs that have provided authorization for the use of the public safety spectrum for the Network.

3. Rules for the Development of the Network Sharing Agreement

Rule 3.1: Negotiation in the First Instance

The Network Sharing Agreement shall be negotiated in the first instance between the E Block Licensee and the National Licensee.

Rule 3.2: Not Binding upon RPCs

The Network Sharing Agreement negotiated between the E Block Licensee and the National Licensee shall not be binding upon any RPC.

Rule 3.3: Minimum Requirements

The Network Sharing Agreement negotiated between the E Block Licensee and the National Licensee shall meet the requirements of Section 8 of these Rules, shall contain no terms or conditions inconsistent therewith, but shall otherwise contain such terms and conditions as to the E Block Licensee and the National Licensee seem necessary or proper.

4. Rules for the Development of Joinder Agreements

Rule 4.1: Notification of Interest

RPCs interested in negotiating a Joinder Agreement with the E Block Licensee shall so advise the E Block Licensee and the National Licensee.

Rule 4.2: Minimum Requirements

All Joinder Agreements negotiated between an RPC and the E Block Licensee shall meet the requirements of Section 17 of these Rules, shall contain no terms or conditions inconsistent therewith, but shall otherwise contain such terms and conditions as to the E Block Licensee and the National Licensee seem necessary or proper.

Rule 4.3: RPC Authorization

If a Joinder Agreement is entered into between an RPC and the E Block Licensee, then that RPC shall provide written authorization to the National Licensee to use public safety spectrum for the Network in the territory of that RPC (the “RPC Authorization”).

Rule 4.4: Form of RPC Authorization

The RPC Authorization shall be in a form specified by the Commission and sufficient to meet the authorization requirements of applicable law.

Rule 4.5: RPC Certification

If a Joinder Agreement is entered into between an RPC and the E Block Licensee, then that RPC shall provide written certification to the Commission that (i) the Joinder Agreement is in the best

interests of the public safety agency constituents of the RPC, (ii) in the judgment of the RPC such commercial use, if any, as is made of the public safety spectrum in the territory of the RPC will be essentially invisible to the public safety constituents of the RPC, and (iii) entry by the RPC into the Joinder Agreement is the only, the most feasible, or the most practical means of making broadband service available to the public safety agency constituents of the RPC (the “RPC Certification”).

Rule 4.6: Form of RPC Certification

The RPC Certification shall be in a form specified by the Commission and sufficient to meet the spectrum utilization requirements of applicable law.

Rule 4.7: No Nondisclosure or Confidentiality Agreements

No nondisclosure agreement or confidentiality agreements of any kind shall prevent RPCs from discussing Joinder Agreements among themselves or providing drafts or final versions of Joinder Agreements to one another.

Rule 4.8: Provision to Commission

All Joinder Agreements that have been executed and delivered by RPCs and the E Block Licensee shall be provided to the Commission by the E Block Licensee, and the Commission may determine what, if any, approval process is applicable thereto.

Rule 4.9: Provision to the National Licensee

All Joinder Agreements that have been executed and delivered by RPCs and the E Block Licensee shall be provided to the Commission by the National Licensee, but the National Licensee shall have no right to approve or object to any such Joinder Agreement.

Rule 4.10: Library of Joinder Agreements

The National Licensee shall maintain a library of all Joinder Agreements that have been executed and delivered by RPCs and shall provide access thereto for any RPC or the authorized representative thereof and make copies of such agreements available to such persons electronically with no limitation upon the right to make and use copies thereof.

Rule 4.11: Construction

Joinder Agreement may vary from or conflict with the terms and conditions of the Network Sharing Agreement, and, in the event of such variance or conflict, the Joinder Agreement shall take precedence over the Network Sharing Agreement in the contractual relationship between the E Block Licensee and the particular RPC that entered the particular Joinder Agreement.

5. Rules for Action by RPCs

Rule 5.1: Voting Rules in General

Each RPC shall propose to the Commission rules for the authorization of actions by RPCs respecting the possible entry by the RPC into a Joinder Agreement (the “Voting Rules”).

Rule 5.2: Voting Rule Requirements

The Voting Rules shall provide the number of votes to be cast by each constituent public safety agency, the number of votes required to be cast in total for action to be taken, and the percentage of the votes cast that must be in favor of any action for that action to be deemed authorized by the RPC.

Rule 5.3: Local Variation

The Voting Rules for an RPC should reflect the past practices of the RPC, the extent of the responsibilities of the respective constituent public safety agencies, and the need to assure a reasonable high degree of concurrence by constituent public safety agencies in relation to any action proposed to be authorized.

Rule 5.4: No Uniformity

There is no requirement for uniformity of Voting Rules among the RPCs.

Rule 5.5: Discretionary Disclosure

Each RPC may, in its own discretion, determine whether to share Voting Rules with other RPCs, the National Licensee, or the E Block Licensee.

Rule 5.6: Submission to the Commission

Each RPC that adopts Voting Rules shall provide a copy of those rules to the Commission (together with, if so desired, a request for the confidential treatment thereof), and the Commission may determine what, if any, approval process is applicable thereto.

6. Funding the Negotiation of the Network Sharing Agreement

Rule 6.1: Initial Deposit

Promptly upon the award of the E Block license to the E Block Licensee, the E Block Licensee shall deposit \$750,000 in a separate account under the sole control of the National Licensee.

Rule 6.2: Application of Funds

The funds in that account shall be use solely for the operating expenses of the National Licensee during the period of the negotiation of the Network Sharing Agreement, including the costs incurred in connection with such negotiation and any related dispute settlement process by the National Licensee or counsel or other advisers to or administrative support for the National Licensee.

Rule 6.3: Evergreen

Until the Network Sharing Agreement is executed and delivered by the E Block Licensee and the National Licensee or either the E Block Licensee or the National Licensee provides a written declaration to the other to the effect that no Network Sharing Agreement will be reached, the RPC shall advise the E Block Licensee of the balance in that separate account as of the end of each calendar quarter, and the E Block Licensee shall promptly make such deposit into that account as is necessary to restore that balance to \$250,000.

Rule 6.4: Default

The consequences of any default by the E Block Licensee in relation to its deposit obligations under this Section 6 of these Rules shall be determined by the Commission.

7. Funding the Consideration and Negotiation of Joinder Agreements

Rule 7.1: Initial Deposit

Promptly upon the execution and delivery of the Network Sharing Agreement by the E Block Licensee and the National Licensee, the E Block Licensee shall deliver a complete copy of the executed and delivered Network Sharing Agreement, together with all exhibits, attachments, addenda, supplements, amendments, or riders or schedules thereto to each RPC and shall deposit for each RPC \$250,000 in a separate account under the sole control of that RPC.

Rule 7.2: Application of Funds

The funds in that account shall be used solely for the expenses of the RPC that are related to the consideration and negotiation of a Joinder Agreement between that RPC and the E Block Licensee and any related dispute settlement process, including the costs of the RPC (or its constituent public safety agencies) and counsel or other advisers to and administrative support for the RPC.

Rule 7.3: Evergreen

Until the Joinder Agreement is executed and delivered by the E Block Licensee and the RPC or either the E Block Licensee or the RPC provides a written declaration to the other to the effect that no Network Sharing Agreement will be reached, the National Licensee shall advise the E



Block Licensee of the balance in that separate account as of the end of each calendar quarter, and the E Block Licensee shall promptly make such deposit into that account as is necessary to restore that balance to \$250,000.

Rule 7.4: Default

The consequences of any default by the E Block Licensee in relation to its deposit obligations under this Section 7 of these Rules shall be determined by the Commission.

8. Requirements Applicable to the Network Sharing Agreement

Rule 8.1: Certain Conditions

Prior to the execution and delivery by the E Block Licensee and the National Licensee of the Network Sharing Agreement, the following documents shall be agreed upon by the E Block Licensee and the National Licensee and shall be attached in definitive form to the Network Sharing Agreement:

- The business plan of the E Block Licensee (the “E Block Business Plan”);
- The business plan of the National Licensee (the “National Licensee’s Business Plan”);
- The technical design, construction, operations, and maintenance specifications for the Network (the “Technical Spec”);
- The build out schedule for the Network (the “Completion Schedule”);
- The schedule of fees and charges, if any, payable by public safety users of the Network (the “Tariff”); and
- The protocol to the declaration of emergencies and the initiation of spectrum preemption in favor of public safety use in the event of emergencies (the “Emergency Protocol”).

Rule 8.2: The E Block Business Plan

The E Block Business Plan shall meet the requirements of Section 9 of these Rules.

Rule 8.3: The National Licensee's Business Plan

The National Licensee's Business Plan shall meet the requirements of Section 10 of these Rules.

Rule 8.4: The Technical Spec

The Technical Spec shall meet the requirements of Section 11 of these Rules.

Rule 8.5: The Completion Schedule

The Completion Schedule shall meet the requirements of Section 12 of these Rules.

Rule 8.6: The Tariff

The Tariff shall meet the requirements of Section 13 of these Rules.

Rule 8.7: The Emergency Protocol

The Emergency Protocol shall meet the requirement of Section 14 of these Rules.

Rule 8.8: No Obligations

The Network Sharing Agreement shall place no obligations upon any RPC or any public safety agencies constituent thereof.

Rule 8.9: E Block Licensee's Rights, Obligations, etc.

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the E Block Licensee in accordance with Section 15 of these Rules.

Rule 8.10: National Licensee's Rights, Obligations, etc.

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee in accordance with Section 16 of these Rules.

Rule 8.11: Public Safety Access to Commercial Spectrum

The Network Sharing Agreement shall provide that the E Block Licensee shall permit emergency preemption of commercial use by public safety users of the E Block in accordance with the Technical Spec and the Emergency Protocol.

Rule 8.12: Commercial Access to Public Safety Spectrum

The Network Sharing Agreement shall provide that the E Block Licensee is the only commercial licensee to which access shall be provided to the 700 MHz public safety spectrum in the territories of the RPCs that enter into Joinder agreements with the E Block Licensee and that access for the E Block Licensee to such spectrum shall be upon a strictly secondary basis invisible and imperceptible to public safety users and unconditionally preemptible by public safety users in the event of emergency in accordance with the technical spec and the emergency Protocol.

9. The Requirements respecting the E Block Business Plan

Rule 9.0: Required Assurances

The E Block Business Plan shall provide sufficient assurance to the National Licensee of the high likelihood of the realization thereof and the availability of the capital necessary to accomplish that plan.

10: The Requirements respecting the National Licensee's Business Plan

Rule 10.0: Sustaining the National Licensee

The National Licensee's Business Plan shall include a budget for the operation of the National Licensee and the funds necessary to support those operations and the sources of those funds.

11. The Requirements respecting the Technical Spec

Rule 11.1: In General

The Technical Spec shall be prepared in accordance with the highest professional standards and shall have at least that level of detail generally found in professionally developed specifications of very large and complex public safety radio systems.

Rule 11.2: Cost Responsibility

The cost of the development of the Technical Spec shall be borne by the E Block Licensee.

Rule 11.3: Preparation Responsibility

Responsibility for the development of the Technical Spec shall rest with the Joint Technical Committee provided for in Rule 11.4.

Rule 11.4: The Joint Technical Committee

The Joint Technical Committee shall be composed of three members chosen by the E Block Licensee and three members chosen by the National Licensee, and all members shall be radio engineering professionals. A majority of the members of the Joint Technical Committee shall be required to carry a recommendation in favor of the technical Spec to the E Block Licensee and the National Licensees.

Rule 11.5: Adoption of the Technical Spec

The adoption of the technical Spec shall require the concurrence of both the E Block Licensee and the National Licensee.

Rule 11.6: Comprehensiveness

The Technical Spec shall address specifically and provide an available and feasible solution in actionable form each of the issues identified in Rule 15.7 and any issue deemed critical by at least three members of the Joint Technical Committee.

Rule 11.7: Identified Issues

The following issues shall be addressed in the technical Spec:

- The specific manner in which preemptive use of commercial spectrum by public safety users is achieved;
- The specific manner in which the commercial use of public safety spectrum is unconditionally preempted; and

- The specific manner in which authentication of users seeking access to public safety databases, applications, or dispatch centers is managed and controlled.

## 12. The Requirements respecting the Completion Schedule

### Rule 12.1: In General

The Completion Schedule shall meet the requirements of the service rules adopted by the Commission.

### Rule 12.2: Specificity of Detail

The Completion Schedule shall specify by date (month and year for the first two years and quarter and year thereafter) and geography (county by county) when coverage will be provided by the Network and ready for use.

### Rule 12.3: Proposal and Approval

The Completion Schedule shall be proposed by the E Block Licensee and subject to approval by the National Licensee.

### Rule 12.4: Not Binding upon RPCs

The approval of the Completion Schedule shall not be binding upon any RPC.

Rule 12.5: Default

The consequences of the E Block Licensee's failure to meet the Completion Schedule shall be addressed by the Commission and may be addressed in the Network Sharing Agreement and in the Joinder Agreements.

13. The Requirements respecting the Tariff

Rule 13.1: In general

The Tariff shall set forth in detail all fees and charges, if any, payable by public safety users of the Network to either the E Block Licensee or the National Licensee.

Rule 13.2: Recoverable Costs

The Tariff shall not seek to impose fees and charges greater than necessary to collect the strictly incremental out-of-pocket costs of providing broadband service to public safety agencies and shall not include any capital cost or expense that could or may benefit commercial users of the Network (the proper fees and charges, "Recoverable Costs").

Rule 13.3: Tariff Design

The Tariff shall set forth in detail the manner in which the Tariff was designed, including information adequate to understand how the fees and charges, if any, payable by public safety users of the Network to either the E Block Licensee or the National Licensee were calculated and how the magnitude of Recoverable Costs was determined.

Rule 13.4: The Effect of the Promise of the E Block Licensee

The Tariff shall fully reflect the stated intention of the E block Licensee to build the public safety broadband network for free (to public safety), and that stated intention shall in no manner be compromised by any provision of the Tariff, the Network Sharing Agreement, or any Joinder Agreement.

Rule 13.5: Limitation to Purpose

No fees or charges shall be imposed by the Tariff for any purpose other than offsetting Recoverable Costs.

Rule 13.6: Accounting

The Tariff shall provide the E Block Licensee and the National Licensee shall cause an annual accounting of tariff fees and charges and Recoverable Costs.

Rule 13.7: Tariff Development

The Tariff shall be jointly developed by the E Block Licensee and the National Licensee and shall be approved by both of them.

Rule 13.8: Not Binding

The tariff shall not be binding upon any RPC.



14. The Requirements respecting the Emergency Protocol

Rule 14.1: Power

The Emergency Protocol shall establish that the power to declare an emergency rests with public safety agency users of the Network which may act alone and in their sole discretion.

Rule 14.2: Immediate Effect of Declaration

The Emergency Protocol shall provide that the declaration of an emergency by a public safety user of the Network when accompanied by a request for immediate preemption of public safety of public safety spectrum or commercial spectrum or both shall be given immediate effect and shall not be subject to challenge or review by the E Block Licensee or the National Licensee.

Rule 14.3: Notice

The Emergency Protocol shall provide for the methods of giving notice to the operator of the system of an emergency and a coupled request for immediate preemption of public safety of public safety spectrum or commercial spectrum or both.

Rule 14.4: Territorial Effect

The Emergency Protocol shall provide rules for the immediate determination of the territory over which the request for preemption is to be given immediate effect.

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15. Specification of E Block Licensee's Rights, Obligations, etc.

Rule 15.0: Required Terms

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee and provide, *inter alia*, that:

- The funding of the National Licensee's Business Plan is underwritten in its entirety by the E Block Licensee to the extent that the tariff does not provide financial support for the funding of that plan;
- The E Block Licensee is responsible for the construction, operation, and maintenance of the Network in accordance with the Technical Spec and the Completion Schedule; and
- The E Block Licensee may provide for the return of its own Recoverable Costs in the Tariff, and the Tariff may not in this respect be increased without the consent of the National Licensee.

16. Specification of National Licensee's Rights, Obligations, etc.

Rule 16.0: Required Terms

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee and provide, *inter alia*, that:

- The National Licensee is responsible for the representation of the interests of public safety agencies in relation to the Network Sharing Agreement;
- The National Licensee shall use its best efforts to avoid any conflict of interests with public safety agencies;

- The National Licensee shall refrain from representing the interests of public safety agencies in any situation in which the interests of the National Licensee conflict with the interests of public safety agencies;
- In carrying out its functions under the Network Sharing Agreement, the National Licensee shall consult with the RPCs and reflect their views in all negotiations and discussions with the E block Licensee and in all matters concerning, relating to, or arising from that agreement; and
- The National Licensee may provide for the return of its own Recoverable Costs in the Tariff, and the Tariff may not in this respect be increased without the consent of the National Licensee.

*17. Requirements Applicable to the Joinder Agreements*

*Rule 17.1: Document Delivery*

As soon as possible and in any event prior to the execution and delivery by the E Block Licensee and an RPC of a Joinder Agreement, the following documents shall be delivered by the E Block Licensee to the RPC:

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; and
- The Emergency Protocol.

Rule 17.2: Incorporation of Documents

The Joinder Agreement shall incorporate by reference each of the Network Sharing Agreement and

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; and
- The Emergency Protocol.

Rule 17.3: Variations

The Joinder Agreement may modify the Network Sharing Agreement, the Technical Spec, the Completion Schedule, the Tariff, and the Emergency Protocol as they apply to the RPC entering into that Joinder Agreement.

18. Disputes between the E Block Licensee and the National Licensee

Rule 18.1: In General

Both the E Block Licensee and the National Licensee shall seek in good faith to reach an understanding with respect to the Network Sharing Agreement and each of

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;

- The Tariff; and
- The Emergency Protocol.

Rule 18.2: Arbitration

Disputes between the E Block Licensee and the National Licensee respecting the terms and conditions of the Network Sharing Agreement or any of

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; or
- The Emergency Protocol

shall be settled by mandatory arbitration under the rules of the American Arbitration Association or such other or similar organization or person or person upon which agreement is reached by the E Block Licensee and the National Licensee.

Rule 18.3: Terms of Reference

The terms of reference for the mandatory arbitration shall consist of the relevant pronouncements of the Commission and these Rules, as between which, the pronouncements of the Commission shall have precedence.

19. Disputes between the E Block Licensee and RPCs

Rule 19.1: In General

Both the E Block Licensee and each RPC shall seek in good faith to reach an understanding with respect to a Joinder Agreement, but no RPC shall be obligated to enter into a Joinder Agreement.

Rule 19.2: Arbitration

Disputes between the E Block Licensee and an RPC respecting the terms and conditions of a Joinder Agreement may be settled by mandatory arbitration at the request of the RPC, but no RPC shall be made involuntarily subject to mandatory arbitration.

Rule 19.3: Arbitration Forum

In the event an RPC requests arbitration, such arbitration shall be conducted in accordance with the rules of the American Arbitration Association or such other or similar organization or person or person upon which agreement is reached by the E Block Licensee and the RPC.

Rule 19.4: Frame of Reference

The terms of reference for the arbitration shall consist of the relevant pronouncements of the Commission and these Rule, as between which, the pronouncements of the Commission shall have precedence.

**C. The Rational for the RCC Broadband Proposal**

**In this Section VI.C of these Comments, RCC explains the relationship between the Rules of the RCC Broadband Proposal and the problems with the Commission's Public Safety**

**Broadband Proposal and the Frontline Proposal that were identified and discussed in Section III-V of these Comments. Those problems were:**

- **The Overall Authority Problem;**
- **The Public Safety Support Problem;**
- **The Sound Operational Foundation Problem;**
- **The Sound Technical Foundation Problem;**
- **The Sound Commercial Foundation Problem;**
- **The Uncertainty Problem;**
- **The Objective Realization Problem;**
- **The Structural Problem;**
- **The Representation and Choice Problem;**
- **The Coverage Assurance Problem; and**
- **The Technical Deficiency Problem.**

Section 2 of these Rules (*The Authorization and Opt-out Rules*) seeks to address the Overall Authority Problem, the Public Safety Support Problem, the Structural Problem and the Representation and Choice Problem.

Section 3 of these Rules (*Rules for the Development of the Network Sharing Agreement*) seeks to address the Overall Authority Problem, the Public Safety Support Problem, the Structural Problem and the Representation and Choice Problem.

Section 4 of these Rules (*Rules for the Development of Joinder Agreements*) seeks to address the Overall Authority Problem, the Public Safety Support Problem, the Structural Problem and the Representation and Choice Problem.

Section 5 of these Rules (*Rules for Action by RPCs*) seeks to address the Overall Authority Problem, the Public Safety Support Problem, the Structural Problem and the Representation and Choice Problem.

Section 6 of these Rules (*Funding the Negotiation of the Network Sharing Agreement*) seeks to address the Structural Problem.

Section 7 of these Rules (*Funding the Negotiation of Joinder Agreements*) seeks to address the Structural Problem.

Section 8 of these Rules (*Requirements Applicable to the Network Sharing Agreement*) seeks to address the Sound Operational Foundation Problem, the Sound Technical Foundation Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Structural Problem, the Coverage Assurance Problem, and the Technical Deficiency Problem.

Section 9 of these Rules (*The Requirements respecting the E Block Business Plan*) seeks to address the Sound Commercial Foundation Problem, the Uncertainty Problem, and the Objective Realization Problem.



Section 10 of these Rules (*The Requirements respecting the National Licensee's Business Plan*) seeks to address the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, and the Structural Problem.

Section 11 of these Rules (*The Requirements respecting the Technical Spec*) seeks to address the Sound Operational Foundation Problem, the Sound Technical Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Coverage Assurance Problem, and the Technical Deficiency Problem.

Section 12 of these Rules (*The Requirements respecting the Completion Schedule*) seeks to address the Uncertainty Problem, the Objective Realization Problem, the Coverage Assurance Problem, and the Structural Problem.

Section 13 of these Rules (*The Requirements respecting the Tariff*) seeks to address the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Representation and Choice Problem, and the Structural Problem.

Section 14 of these Rules (*The Requirements respecting the Emergency Protocol*) seeks to address the Sound Operational Foundation Problem, the Uncertainty Problem, and the Objective Realization Problem.

Section 15 of these Rules (*Specification of E Block Licensee's Rights, Obligations, etc.*) seeks to address the Sound Operational Foundation Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, and the Objective Realization Problem.

Section 16 of these Rules (*Specification of National Licensee's Rights, Obligations, etc.*) seeks to address the Public Safety Support Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, and the Representation and Choice Problem.

Section 17 of these Rules (*Requirements Applicable to the Joinder Agreements*) seeks to address the Public Safety Support Problem, the Sound Operational Foundation Problem, the Sound Technical Foundation Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Structural Problem, the Coverage Assurance Problem, the Technical Deficiency Problem, and the Representation and Choice Problem.

Section 18 of these Rules (*Disputes between the E Block Licensee and the National Licensee*) seeks to address the Sound Operational Foundation Problem, the Sound Technical Foundation Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Structural Problem, the Coverage Assurance Problem, and the Technical Deficiency Problem.

Section 19 of these Rules (*Disputes between the E Block Licensee and RPCs*) seeks to address the Public Safety Support Problem, the Sound Operational Foundation Problem, the Sound

Technical Foundation Problem, the Sound Commercial Foundation Problem, the Uncertainty Problem, the Objective Realization Problem, the Structural Problem, the Coverage Assurance Problem, the Technical Deficiency Problem, and the Representation and Choice Problem.

## **VII. Conclusion**

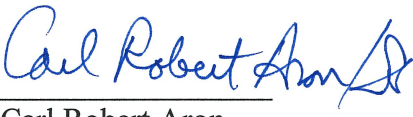
For the reasons stated, RCC respectfully suggests that the RCC Broadband Proposal be adopted.

RCC appreciates the opportunity to provide its views to the Commission.

RCC hopes that these Comments will be found by the Commission to be constructive.

Respectfully submitted,

RCC Consultants, Inc.

By:   
Carl Robert Aron  
Executive Vice President